

EXHIBIT Y

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:) CASE NO. 11-30210-BJH-11
)
FRE REAL ESTATE, INC., F/K/A)
TCI PARK WEST, II, INC.,)CHAPTER 11
)
Debtor.)

TRANSCRIPT OF
FIRST MEETING OF CREDITORS
FEBRUARY 8, 2011

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2 P R O C E E D I N G S

3 MS. DURHAM: Our lack of high-tech
recording system.

4 If guys have photo IDs on you, if you
5 would yank those out while you're sitting there.

6 Thank you. All right. All right.

7 Mr. Morgan.

8 UNIDENTIFIED SPEAKER: Are you going to
9 do a cotton swab in the cheek or what?

10 MS. DURHAM: Yeah, I'm going to do
11 fingerprints here in a second.

12 Let's see. I always have trouble
13 finding the -- 2016. You guys are good for a while.

14 I'm going to hand Gregory Crown back his
15 and Richard Morgan back his Texas driver's license.
16 Thank you very much.

17 Okay. This is the first meeting of
18 creditors in FRE Real Estate, Inc., Case Number
19 11-30210, a Chapter 11 pending in Judge Houser's court.

20 My name is MaryFran Durham. I'm acting
21 under the authority of the United States Trustee for
22 the Northern District of Texas.

23 This meeting is being recorded to this
24 chip. If anyone wants a copy of the recording, give us
25 a blank compact disk and we will burn your recording to

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1 that disk. And if you send us a self-addressed,
2 stamped envelope for that disk, we will mail it to you
3 after we've recorded on to it.

4 Today's date is February the 8th, 2011.
5 The case was filed January 4th, 2011. Debtor appeared
6 at the debtor interview with the Office of the U.S.
7 Trustee and appeared to comply with all of our
8 administrative requirements that were discussed at the
9 -- the debtor interview. Have provided proof of
10 insurance, I believe, on all of the assets.

11 I've got just a couple -- we're going to
12 have to talk about a couple of things.

13 I'm not sure if the tax returns have
14 been provided yet. Do you know, Doug?

15 MR. BUNCHER: They have.

16 MS. DURHAM: They have?

17 Okay. Well, let me add, Doug Buncher is
18 here as debtor's counsel. Gregory Crown and Richard
19 Morgan are here to speak for the debtor.

20 If each of you gentlemen would raise
21 your right hand.

22 Do each of you solemnly swear or affirm
23 that any testimony you give here today will be the
24 absolute truth?

25 MR. CROWN: I do.

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1 MR. MORGAN: I do.

2 MS. DURHAM: Thank you.

3 There have been several hearings that
4 you-all participated in, and the motion to dismiss is
5 continued to February 17th.

6 Why don't I let you make some opening
7 remarks if you want to, Mr. Buncher.

8 MR. BUNCHER: Well, as everyone knows,
9 there's a pending motion to dismiss the case, primarily
10 on the basis that all these properties got transferred
11 to this one entity prior to the bankruptcy. And Judge
12 Houser -- Houser will decide the issues there.

13 The issues have been fully briefed, and,
14 you know, essentially it's the debtor's position that
15 it should be entitled to at least 120-day exclusive
16 time period to prepare and propose a plan in this case.
17 And the schedules have all been prepared.

18 As I said, Mr. Crown was the primary
19 person working with our office to prepare the schedules
20 and the statements, and it appears they accurately
21 reflect all of the assets and liabilities. And
22 Mr. Crown is here to answer any questions that anybody
23 has.

24 MS. DURHAM: At the debtor interview we
25 talked about the operating reports and changing the

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1 date for your reporting period.

2 MR. CROWN: Yes. The fiscal period for
3 -- for most of those operating assets is from the 21st
4 through the -- through the 20th, but we're going to
5 conform to the calendar month.

6 MS. DURHAM: You're going to come to our
7 -- okay.

8 MR. CROWN: Yes. Absolutely.

9 MS. DURHAM: All right. So then your
10 first report --

11 MR. CROWN: Cash basis.

12 MS. DURHAM: -- will be due the 20th.

13 MR. CROWN: 20th. Yes.

14 MS. DURHAM: Okay.

15 And the insurance we had, of course, was
16 -- there were some other names. The insured was listed
17 as the -- the managing company of the Prime Income
18 Asset Management. And I'm wondering if that was
19 changed over or are you going to leave it?

20 MR. CROWN: As a matter of fact, we're
21 in the process, and I hope that within the next 24 to
22 48 hours all of those revisions will be made to -- all
23 of the assets are insured.

24 MS. DURHAM: Yes.

25 MR. CROWN: The paperwork didn't exactly

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1 catch up with the things with last week's loss with the
2 weather and so on. It's been catch-up in that regard.

3 MS. DURHAM: And even the -- there was a
4 question about the land without any improvements on it.
5 That has a liability --

6 MR. CROWN: That all has liability, yes.

7 MS. DURHAM: Okay.

8 MR. CROWN: Yes. And each of those with
9 fixed assets on it has replacement value.

10 MS. DURHAM: Okay. Is the debtor
11 operating out of -- what is the status of the
12 debtor-in-possession's bank account just now?

13 MR. CROWN: All the -- all the operating
14 assets have debtor-in-possession accounts set up.

15 MS. DURHAM: And they are at the --

16 MR. CROWN: They are at Bank of America.

17 MS. DURHAM: Bank of America?

18 MR. CROWN: Yes.

19 MS. DURHAM: Okay.

20 MR. CROWN: Individual accounts for each
21 of the operating assets.

22 MS. DURHAM: And how many people can
23 sign on the debtor-in-possession accounts?

24 MR. CROWN: I -- I'm not one of the
25 signatories, but I believe there are -- I believe there

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1 are three.

2 MS. DURHAM: Total of three for the
3 whole --

4 MR. CROWN: Yes.

5 MS. DURHAM: -- group of them?

6 MR. CROWN: Yes.

7 MS. DURHAM: And who would those three
8 people be?

9 MR. CROWN: Gene Bertcher I believe is
10 one of them. Rick Conley, who is the president of
11 Regis. There may be a third person. I don't recall
12 who that might be. Like I say, I'm not involved in --
13 in that.

14 MS. DURHAM: Do you know, Mr. Morgan?
15 Would it be a --

16 MR. MORGAN: I'm sorry. What was the
17 question?

18 UNIDENTIFIED SPEAKER: Mr. Morgan --

19 MS. DURHAM: Mr. Morgan --

20 MR. MORGAN: Oh, I believe I'm a signor
21 on all the accounts. I'm sorry.

22 MS. DURHAM: You are?

23 MR. MORGAN: I believe so.

24 MS. DURHAM: So you would be the third?

25 MR. MORGAN: Yes.

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1 MS. DURHAM: And who typically signs the
2 debtor-in-possession checks?

3 MR. CROWN: Right now the operating
4 checks are being signed by Regis because they actually
5 pay the bills --

6 MS. DURHAM: Would that be Rick Conley?

7 MR. CROWN: Yes.

8 MS. DURHAM: And have you sent us the
9 evidence of those --

10 MR. CROWN: Yes.

11 MS. DURHAM: -- checks?

12 MR. CROWN: Yes.

13 MS. DURHAM: Okay. We didn't get mail
14 service all last week either, so we're a little behind.
15 There are stacks of it.

16 MR. CROWN: Maybe -- maybe even two or
17 three weeks ago we sent them.

18 MS. DURHAM: Oh, okay.

19 _____ MR. CROWN: You should have all of that.

20 MS. DURHAM: I'm going to let the
21 creditors ask questions, and what I'll do initially is
22 each person can have ten minutes, and then, if someone
23 wants to go the second round, that will be fine, we'll
24 -- we'll do more time than that. But on this
25 preliminary one the ten minutes to begin with, and

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1 then...

2 Please state your name for the
3 recording.

4 MR. WEITMAN: Oh, may I be first?

5 MS. DURHAM: You may be first.

6 MR. WEITMAN: Thank you. Hi. David
7 Weitman for Wells Fargo Capital Finance.

8 Mr. Crown, you were previously the
9 financial advisor to the various transferor entities,
10 if you will, that transferred their assets into FRE, is
11 that correct?

12 MR. CROWN: No, not -- not correct. I
13 was -- I was asked -- I'm vice president with Prime
14 Income Asset Management and Capital Markets Group.
15 When this bankruptcy was -- the petition was filed, I
16 was asked to coordinate the -- putting together the
17 (inaudible) schedules.

18 MR. WEITMAN: But was Prime Income Asset
19 Management, were they the financial advisor to the
20 transffor and the (inaudible) to kind of spearhead
21 that?

22 MR. CROWN: They -- they were an advisor
23 to the extent that they were an advisor to TCI and TCI
24 was the beneficial owner of many of those entities,
25 yes.

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1 MR. WEITMAN: And, as the financial
2 advisor, were you aware of basically the -- the loan
3 documents of the Corp.?

4 When I say "you," I mean Prime Income.

5 Was it aware of the relationships with
6 its various lenders?

7 MR. CROWN: Yes.

8 MR. WEITMAN: So if there were let's say
9 default notices and the like that went to a transferror
10 entity, would Prime Income have knowledge of those
11 defaults?

12 MR. CROWN: Most likely, yes.

13 MR. WEITMAN: And would they also have
14 knowledge of the loan documents and the conditions
15 under which transfers could occur --

16 MR. CROWN: Yes.

17 MR. WEITMAN: -- on the loan documents?

18 Would they also be familiar with the
19 prohibitions on the transfer of the ownership interests
20 in the transferror entities?

21 MR. CROWN: To the extent there were any
22 such prohibitions, I'm sure they would have been aware
23 of that, yes.

24 MR. WEITMAN: So that basically was --
25 correct me if I'm wrong -- sort of the back room for

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1 the transferror entity? That's where the staff or
2 officers came from was Prime Income?

3 MR. CROWN: Since the transferror
4 entities did not have any employees, Prime Income Asset
5 Management acted as a -- as the advisor to the entity
6 that owned those assets and therefore supplied the
7 manpower and efforts in that regard.

8 MR. WEITMAN: Thank you.

9 Can you help me understand where the
10 \$100,000 retainer came from that Prime Income provided
11 to Mr. Lewis and now is in these proceedings?

12 MR. CROWN: When you say where it came
13 from, I'm not sure I understand it.

14 MR. WEITMAN: There's a statement -- in
15 the statement of financial affairs --

16 MR. CROWN: Yes.

17 MR. WEITMAN: -- I believe referring to
18 a \$100,000 retainer.

19 MR. CROWN: Uh-huh.

20 MR. WEITMAN: It said the source of the
21 \$100,000 retainer was Prime Income.

22 MR. CROWN: Yes.

23 MR. WEITMAN: Could you give me some
24 more details on whether it was self-funded by Prime
25 Income or if it had collected money from other sources

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2 and then remitted it to Mr. Lewis?

3 MR. CROWN: I can't really answer that.

4 Prime Income is -- has, you know, revenues and expenses
5 like any other going concern, and I would presume would
6 have had the -- the resources to -- to write such a
7 check, but I -- I don't know exactly how that was
funded.

8 MR. WEITMAN: But you do understand it
9 was Prime Income's own asset? Or you really don't know
10 the source?

11 MR. CROWN: I honestly don't know the
12 source.

13 MR. WEITMAN: Did Prime Income receive
14 financial advisory fees from these transffor
15 entities?

16 MR. CROWN: They received financial
17 advisory fees from the publicly-traded companies for
18 which they act as an advisor.

19 MR. WEITMAN: Okay. So that would be,
20 if you will, American Realty --

21 MR. CROWN: And Transcontinental.

22 MR. WEITMAN: -- Income Opportunity?

23 MR. CROWN: Yes.

24 MR. WEITMAN: And Transcontinental
25 Realty?

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1 MR. CROWN: Yes.

2 MR. WEITMAN: You mentioned that
3 Mr. Gene Bertcher is a signatory on the
4 debtor-in-possession accounts.

5 MR. CROWN: I believe he is as a chief
6 financial officer of -- of TCI and given that he -- he
7 oversees the assets and so on from a financial
8 standpoint.

9 MR. WEITMAN: I thought what occurred
10 was that after the transfer of the assets into FRE and
11 the transfer of the ownership interests in the
12 transferror entities, I thought Mr. Bertcher was no
13 longer connected with the transferror entities. Is
14 that not true?

15 MR. CROWN: Well, to the extent that
16 there -- there's not significant staff staffed over at
17 the transferror entity, FRE -- transferee entity --
18 Regis and Prime are still providing some services to --
19 support services to -- to FRE.

20 MR. WEITMAN: So, again, if you would --
21 maybe you've got it in front of you. I'm just trying
22 to understand the Question Number 22 on the statement
23 of financial affairs -- this would be Page 10 of 11 --
24 answer to 22, as a former officer/director of FRE that
25 shows Gene Bertcher -- correct, sir?

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1 income yet to make the monthly lease payments?

2 MR. CROWN: As of yet, no.

3 MR. WEITMAN: Is there yet -- excuse me.

4 At the point in time in which FRE went
5 into bankruptcy, was there any source of revenues
6 beyond the encumbered rents coming from the office
7 buildings and other income-producing properties?

8 MR. CROWN: Well, for the
9 non-income-producing properties, particularly the land,
10 that was being funded by the publicly-held parents that
11 were beneficial owners of that land.

12 MR. WEITMAN: And were there like
13 intercompany transfers in order to support those
14 operations --

15 MR. CROWN: I'm sure there were. I'm
16 not -- I don't -- I'm not involved in those -- those
17 accounting transactions, but I'm sure that's the way it
18 was handled.

19 MR. WEITMAN: So what occurred in this
20 -- if you were there or if you know -- what occurred in
21 December of 2010 to cause Transcontinental, American
22 Realty & Income Opportunity to just sort of transfer
23 all these properties in and try to monetize their
24 interest? Can you share your perspective?

25 MR. CROWN: Well, I was not a part of

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1 the decision at all. But as -- on the periphery I can
2 say that, you know, in a general sense the recession
3 that we've been in for the last two years placed a
4 tremendous burden on all real estate. Leasing was way
5 down. That would affect the operating assets. The
6 sale of land for new development was way off -- nearly
7 nonexistent -- and that would affect the profit
8 potential of the land holdings.

9 Further, the financing markets were
10 dislocated in that it was extremely difficult to get --
11 to extend loans that were coming due and/or replace
12 those loans, which was -- would be the preference for
13 those that had existing loans -- for the mortgagees of
14 existing loans were looking for replacement financing
15 if they could get it, but it wasn't available at -- at
16 reasonable rates.

17 MR. WEITMAN: Do you know on a monthly
18 basis how much Transcontinental and the other
19 publicly-held entities were supporting these
20 transferror entities that had non-income-producing
21 assets?

22 MR. CROWN: I do not know that. But to
23 the extent that they had no revenue productions through
24 the sale of the land -- and most of these are land
25 holdings as opposed to buildings that were

1 Page 18
2

3 non-producing revenue -- it could -- it's a function of
4 taxes and -- and insurance and some maintenance fees.

5 But the big nut was -- was the interest payments.

6 MR. WEITMAN: Were there --

7 MR. CROWN: And to the extent --

8 MR. WEITMAN: -- I'm sorry.

9 MR. CROWN: -- and to the extent there
10 might be some principal payments along with the
11 interest payments.

12 MR. WEITMAN: But they weren't really
13 carrying the taxes, were they? Because they would
14 refinance through Propel. Correct?

15 MR. CROWN: Well, in some cases, that's
16 true. In other cases, taxes were paid. But to those
17 taxes that were -- were funded by Propel, they had
18 monthly income -- monthly interest payments to Propel.

19 MR. WEITMAN: And those were being
20 funded by the parent entities?

21 MR. CROWN: Yes. And I don't know
22 exactly. It depends on -- on which -- which asset
23 you're talking about as to which entity might be
involved. But I've been advised that that's the way it
was done. I was not a part of that, but --

24 MR. WEITMAN: Are there any records that
25 summarize, say for the last twelve months, the various

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1 financings and transfers that came from the parent
2 companies to support the various transferror entities?
3 Are there any records of that?

4 MR. CROWN: I'm sure there are records.
5 I don't have those records. As I said, I was not part
6 of that, but I'm sure there are records, yes.

7 MR. WEITMAN: I just make that request
8 to Mr. Buncher, if he might be able to provide that to
9 us, because I'd like to know what the historical
10 pairing costs have been and what was being funded prior
11 to the transfers. It would make it -- I think it's
12 very -- you know, it would elucidate a lot of this
13 subject matter.

14 MR. BUNCHER: Well, I would suggest that
15 if you've got a document request or a rule -- if you
16 want to take the debtor's 2004 examination and you want
17 to request documents in that regard, because these
18 records you're talking about may not be the debtor's
19 records, for example. They may be TCI's records. I
20 don't know. But I think you and I can just work
21 through that, but I don't know that this is the proper
22 forum to be asking us to produce records.

23 MS. DURHAM: Well, it's kind of a
24 distinct list. But do you want it for all of the
25 properties?

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1 MR. WEITMAN: Well, let me continue, if
2 I may.

3 Is that an intercompany payable? Is
4 that -- was that due by the transferror back to the
5 parent company for those loans? Or were those --

6 MR. CROWN: I don't know exactly how
7 those were accounted for. I don't know exactly --

8 MS. DURHAM: Who would know how that was
9 done?

10 MR. CROWN: The -- the financial
11 officers of -- of the parent companies of the prior
12 owners.

13 MR. WEITMAN: I mean, just as an
14 example, let's just say, you know, up until -- up
15 through December 23 there was three million dollars
16 that came down from the transferror entity as a loan
17 into -- into the transferror --

18 MS. DURHAM: E.

19 MR. WEITMAN: -- excuse me -- the
20 transferee entity -- thank you -- or it was the
21 transferee of the say three million dollars or
22 whatever, it would then have an obligation, would it
23 not, to repay that sum of money to the parent?

24 MR. CROWN: I don't know what the --
25 what the terms of the -- of the arrangement would be.

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2 MS. DURHAM: Who would know the answer
3 to that question? Like a person's name.

4 MR. CROWN: Chief financial officer for
5 TCI would know.

6 MR. WEITMAN: So Mr. Bertcher?

7 MR. CROWN: Yes.

8 MR. WEITMAN: Okay.

9 MR. BUNCHER: Just so we're clear, we're
10 asking questions about TCI's financial records and TCI
11 -- how TCI, a public company that's not a party in this
12 bankruptcy, funded its subsidiaries at a time when
13 these properties were owned by those companies. Those
14 are not the debtors's records.

15 MR. WEITMAN: But what I'm --

16 MS. DURHAM: I'm interpreting this as
17 trying to figure out the debts of the debtor. Is that
what -- I mean --

18 MR. BUNCHER: Correct.

19 MS. DURHAM: -- because if the debtor
20 has an obligation to repay TCI, is that on here in our
21 stack of papers?

22 MR. BUNCHER: There is no debt reflected
23 to TCI other than what we're calling the seller notes
24 that were given back to Transcontinental, et cetera.

25 MS. DURHAM: But we -- what his

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1 question, I guess, a year or so before filing, is there
2 debt that came from -- or is there money that came from
3 TCI that needs to go back and it's in unsecured or bond
4 form or -- it's in some kind of format.

5 MR. CROWN: Not -- not from the debtor,
6 no.

7 MS. DURHAM: Okay. So this debtor --
8 this --

9 MR. CROWN: These are all the debts of
10 the debtor, period.

11 MS. DURHAM: Okay.

12 MR. BUNCHER: And -- and we're assuming
13 too that assuming TCI funded money into its
14 wholly-owned subsidiaries, you're assuming that was
15 treated as a loan. He said he doesn't know.

16 MS. DURHAM: No. He's just wanting to
17 know if it's a debt of --

18 MR. WEITMAN: No. I'm trying to
19 understand --

20 MR. BUNCHER: No. I understand. I'm
21 not assuming anything. I'm just --

22 MR. CROWN: It's not -- it's not -- the
23 debts of the debtor are --

24 MS. DURHAM: Here.

25 MR. CROWN -- reflected here.

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1 MS. DURHAM: Okay.

2 MR. CROWN: Those are the only debts of
3 the debtor.

4 MS. DURHAM: So this would indicate that
5 there are no alternative --

6 MR. WEITMAN: So if there was support
7 given, it was through equity infusions? Is that what
8 we must assume from that, since there are no additional
9 intercompany loans?

10 MR. CROWN: Like I said, I don't know
11 what to assume. All I can say is that -- that these
12 are the debts of the debtor. Pre 12/23 I don't know
13 about.

14 MS. DURHAM: Your time is up. I'm going
15 to move --

16 MR. WEITMAN: Okay. Can I go one more
17 question?

18 MS. DURHAM: Uh-huh. Yeah. Sure.

19 MR. WEITMAN: And Mr. Stromberg can
20 follow up.

21 MS. DURHAM: And then we'll come back
22 around.

23 MR. WEITMAN: Oh. Well, then I'll wait.

24 MS. DURHAM: Go ahead, Mr. Stromberg.

25 MR. STROMBERG: I was just going to ask

1 Page 24

2 a clarification question.

3 This is Mark Stromberg on behalf of
4 State Bank of Texas.

5 We were talking about the debts of the
6 debtor, but perhaps it's fair to also ask, as between
7 the transferror entities which were transferring the
8 properties on December 23rd to the debtor, did they
9 have a debt prior to December 23rd with one of the
10 affiliates or parent companies in the TCI/American
Realty Trust family?

11 MR. CROWN: Yeah, I honestly -- I
12 honestly don't know because I've never seen the books
13 of the predecessor entities.

14 MR. STROMBERG: Okay. So it's at least
15 possible then, theoretically, that while there may have
16 been a debt between say, for example, Crown Point or
17 TCI Crown Point, which was the entity that my bank went
18 to -- and perhaps TCI or American Realty Trust or one
19 of the other -- or Prime Income Asset or something like
20 that -- that that debt may not have been transferred so
21 it wouldn't necessarily be reflected on the schedules?

22 MR. CROWN: Yeah. Well, it wasn't
23 transferred because it's not reflected on the schedule.

24 MR. STROMBERG: Okay.

25 MR. CROWN: But whether one existed I

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1 don't know.

2 MR. STROMBERG: Okay. Let me go back a
3 step to the DIP accounts.

4 MR. CROWN: Uh-huh.

5 MR. STROMBERG: Was there prior to
6 bankruptcy a separate bank account for Crown Point,
7 Inc. associated with that property?

8 MR. CROWN: What is that property known
9 as?

10 MR. STROMBERG: Arcon.

11 MR. CROWN: Arcon.

12 MR. STROMBERG: It's the acreage in
13 Irving.

14 MR. CROWN: I'm going to refer to this
15 schedule to make sure I --

16 MR. STROMBERG: Please.

17 MR. BUNCHER: Arcon was raw land,
18 correct?

19 MR. STROMBERG: Right. I'm just asking
20 if there was an account.

21 MR. CROWN: I don't believe there was,
22 no.

23 MR. STROMBERG: Okay.

24 MR. CROWN: There were -- the reason I'm
25 looking is there were some small accounts with some of

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2 the land, but not with that particular one.

3 MR. STROMBERG: Okay. And so is it fair
4 to assume that among the DIP accounts that were set up,
5 when you said they were relating to the operating
6 entities, Arcon is not what you would consider an
operating entity?

7 MR. CROWN: I believe a DIP account was
8 set up for the land holdings in general. Since they
9 did not have any revenue flowing in, there's one master
10 DIP account for the non-revenue-producing assets.

11 MR. STROMBERG: And how was that account
12 funded?

13 MR. CROWN: Well, at the moment it
14 isn't.

15 MR. STROMBERG: Okay.

16 MR. CROWN: I believe there was a de
17 minimis initial deposit, but that was it.

18 MR. STROMBERG: Okay. And from whom did
19 that deposit come? Do you know?

20 MR. CROWN: I do not know.

21 MR. STROMBERG: And, insofar as the ad
22 valorem taxes that came due on January 31, 2011, for
23 the year 2010 are concerned, do you know whether or not
24 there were any assets set aside either in Coventry
Point, Inc. -- did I say Coventry Point -- I think it's

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1 Coventry Point is actually the name of the Arcon entity
2 -- or subsequent to the bankruptcy in the DIP account
3 for purposes of paying taxes relative to this property,
4 including perhaps taxes -- you know, percentage -- you
5 know, twelve -- one-twelfth percent interest for the
6 taxes that are coming due in 2011 that will be due in
7 2012?

10 MR. STROMBERG: Okay. I heard from
11 Mr. Morgan in his testimony that it was estimated that
12 overall, for all of the properties that are in the
13 debtor right now, there are approximately 2.9 million
14 dollars worth of ad valorem taxes that came due on
15 January 31, 2011. Is that a fact consistent with your
16 understanding?

17 MR. CROWN: Yeah. It's a little bit
18 higher than that. It's like 3.16 million is what the
19 number is. That was a preliminary number, and they may
20 have not seen the final number.

21 MR. STROMBERG: With respect to the
22 non-income properties, Mr. Crown, what is your
23 understanding and belief as to how the debtor would
24 propose to take care of those taxes?

25 MR. CROWN: Well, of course, that will

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1 have to be part of the plan that we present to the --
2 to the creditors and the -- the court, and at the
3 moment we don't have the details on how those will be
4 paid.

5 I will say that both the 2010 taxes due
6 on 1/31 -- payable on 1/31/11 and the 2011 taxes
7 payable on 1/31/12 I believe are both subject to a
8 payment plan under the Bankruptcy Code, and we may
9 avail ourselves of that.

10 MR. STROMBERG: Okay. Insofar as the
11 records of the debtor are concerned, were there related
12 to the Arcon property separate files set up dealing
13 with that property or the business entity that held the
14 property prior to December 23rd, 2010?

15 MR. CROWN: Yes.

16 MR. STROMBERG: And where were those
17 records located?

18 MR. CROWN: The - in general, the land
19 holdings were overseen by Prime personnel and
20 accounting. The producing -- the operating assets were
21 overseen by Regis and its accounting staff. So Arcon
22 would be under the Prime umbrella in terms of
23 accounting.

24 MR. STROMBERG: And after the property
25 was transferred on December 23rd, 2010, to the debtor

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1 have the records related to that property also been
2 transferred to the debtor?

3 MR. CROWN: For ease they have not yet
4 been transferred to the debtor. And as part of the --
5 the effort to look after the best interests of its --
6 of its notes payable -- in other words, the notes
7 actually receivable to the prior owners, in Prime's
8 role as an advisor to the parent company of those
9 companies, it's currently donating its services to
10 provide accounting support to -- to them.

11 MR. STROMBERG: Just to put a name
12 behind the company, who at Prime Income Asset
13 Management were the custodians of the records related
14 to the Arcon property?

15 MR. CROWN: Amy Cole, C-O-L-E, an
16 accounting manager, was the prime person involved in
17 those.

18 MR. STROMBERG: Custodian?

19 MR. CROWN: I used the word "prime." In
20 both cases, Prime and prime.

21 MR. STROMBERG: Okay. (Inaudible.)

22 MR. CROWN: Exactly.

23 MR. STROMBERG: Insofar as the decision
24 to roll these properties up into Fenton Real Estate,
25 now known as FRE Real Estate, Inc., you indicated that

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2

you were not involved in that decision process. Am I
right?

3 MR. CROWN: I was not, no.

4 MR. STROMBERG: Do you know who was?

5 MR. CROWN: Well, I -- I know that --
6 that members of senior management with TCI to the
7 extent that they were -- and Prime were involved.
8 Danny Moos was involved. Steven Shelley was involved.

9 Beyond that, I don't know any particular
10 individuals who were involved in those decisions. As
11 the advisors to the publicly-held companies that were
12 the beneficial owners of most of those assets, they
13 would have been the key personnel to make those calls
14 and decisions.

15 MR. STROMBERG: My understanding from
16 Mr. Morgan, both in his deposition and from his
17 testimony in court, was that one of the likely
18 scenarios in which a restructuring or reorganization
19 would take place in this case involves contribution
20 coming from -- forgive me for saying this -- but your
21 side of the ledger, Mr. Crown, either Prime Income
22 Asset Management or TCI or American Realty Trust or one
23 of the associated entities under that umbrella.

24 What is your appreciation right now of
25 the ability of the -- of these entities to fund a cash

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1 contribution today if necessary for the benefit of --
2 of the debtor in this case?

3 MR. CROWN: I -- I really don't know
4 what their -- what their appetite is and ability is to
5 fund those. But, as Mr. Morgan stated, it's certain at
6 one of the -- the sources, unless assets could be --
7 loans could be refinanced or a third party unrelated
8 equity source could be found.

9 MR. STROMBERG: Has Mr. Morgan come to
10 you or somebody else that you know of in TCI or
11 American Realty Trust to seek that contribution or some
12 contribution of -- of equity or reorganization money or
13 restructuring funds?

14 MR. CROWN: No, he has not come to me,
15 but I know he has had -- has begun discussions with --
16 with those parties to determine whether there's a
17 potential -- or what role they might play in such
18 funding.

19 MR. STROMBERG: You mentioned in some of
20 your earlier discussions with Mr. Weitman some of the
21 things that have caused and resulted in the roll-up
22 process with all of these properties going into FRE in
23 December of 2010, including leasing that was down, the
24 economy generally having an impact on the availability
25 of financing, the unavailability of sales and

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1 development of buyers and things of that nature.

2 Is TCI and/or American Realty Trust
3 experiencing many of the same problems right now that
4 might -- that's affecting their liquidity?

5 MR. CROWN: Well, I think any real
6 estate company in today's economy has for the last
7 couple of years been experiencing those same pressures.

8 If you're a company that develops land -- and these
9 companies are -- they buy land at wholesale and try to
10 sell it at retail. And if the -- the outlet for
11 selling at retail is stymied or slowed down or comes to
12 a halt, it's -- it's difficult. It's the cash -- cash
13 pressure on them. Any -- any real estate company.

14 MR. STROMBERG: I don't want to
15 over-interpret your answers, so let me ask you to be
16 specific.

17 As it relates to TCI and American Realty
18 Trust, are they in fact having some of these same
19 difficulties, to your understanding?

20 MR. CROWN: Yes. And all real estate
21 companies are. And they are a real estate company.
22 They are having challenges the same.

23 MR. STROMBERG: And that affects their
24 liquidity as well?

25 MR. CROWN: Certainly, yes.

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2 MR. STROMBERG: And some of these same
3 issues that resulted in the FRE roll-up and bankruptcy
4 are affecting other properties within the TCI/American
5 Realty Trust family too, are they not?

6 MR. CROWN: Yes, to one degree or
7 another.

8 MR. STROMBERG: I'll pass for this time.
9 Thank you.

10 MR. WARNER: Mr. Crown, let me start
11 with you.

12 You're not an officer of the debtor?

13 MR. CROWN: I am not.

14 MR. WARNER: You're not a director of
15 the debtor?

16 MR. CROWN: No.

17 MR. WARNER: I'm sorry. I apologize.

18 Michael Warner, Cole, Scholtz, Meisel,
19 Forman & Leonard, Fort Worth office. I represent HCMLP
as special servicer.

20 MS. DURHAM: Thank you.

21 MR. WARNER: I apologize. Let's start
22 again.

23 You're not an officer of the debtor?

24 MR. CROWN: I am not.

25 MR. WARNER: You're not a director of

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1 the debtor?

2 MR. CROWN: No.

3 MR. WARNER: You're not a shareholder of
4 the debtor?

5 MR. CROWN: I am not.

6 MR. WARNER: Are you authorized to
7 testify today on behalf of the debtor?

8 MR. CROWN: Yes.

9 MR. WARNER: And who authorized you?

10 MR. CROWN: Mr. Morgan.

11 MR. WARNER: In writing or just orally?

12 MR. CROWN: Verbally, yes.

13 MR. WARNER: So there's nothing in
14 writing authorizing you to do so today?

15 MR. CROWN: Not to my knowledge there
16 isn't, no.

17 MR. WARNER: You indicated a moment ago
18 that there are three people that are signing on the
19 debtor-in-possession bank accounts, Mr. Gene -- is it
20 Bertcher? Buncher?

21 MR. CROWN: Bertcher.

22 MR. WARNER: Bertcher, Rick Conley and
23 Mr. Morgan, correct? And nobody else is authorized to
24 sign?

25 MR. CROWN: I believe there are only

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i three. I -- I -- I believe those are the three.

2 MR. WARNER: Okay. And you said that
3 you prepared the debtor's schedules, is that correct?

4 MR. CROWN: I coordinated the
5 preparation of all of the schedules. So basically I
6 accessed the accounting staff of Regis and Prime, who
7 are the -- who maintained the regular ongoing books and
8 records for these various assets, and made demands on
9 them in terms of information that I needed to complete
10 the schedules and so forth.

19 MR. WARNER: And let's go back to the
20 signatures then on the bank statements. Since the --
21 since Mr. Bertcher -- I'm sorry -- it's Bertcher --

22 MR. CROWN: Bertcher.

23 MR. WARNER: -- Bertcher is a signatory
24 on the debtor-in-possession accounts, he's not an
25 officer of the debtor, is he?

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1 MR. CROWN: To my knowledge he's not.

2 MR. WARNER: Is he a director of the
3 debtor?

4 MR. CROWN: To my knowledge he is not.

5 MR. WARNER: Is he a shareholder of the
6 debtor?

7 MR. CROWN: I don't believe so.

8 MR. WARNER: So he's a third party
9 signing on the debtor-in-possession bank accounts,
10 correct?

11 MR. CROWN: Well, I don't think he's
12 signing at all. He was put on there from an
13 accommodation standpoint in terms of just ease of
14 having another highly-regarded financial person in the
15 loop, but I don't believe he's executing any signatures
16 at this point.

17 MR. WARNER: But he has the authority to
18 do so?

19 MR. CROWN: He does.

20 MR. WARNER: And would the answers be
21 the same with Mr. Conley? He's not a director?

22 MR. CROWN: No. He is the president of
23 Regis. And he's not affiliated with the debtor per se.

24 MR. WARNER: Well, okay. I'm not going
25 to ask you what you mean by the word "affiliated."

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1 He's not a director of the debtor?

2 MR. CROWN: He's not a director, he's
3 not an officer.

4 MR. WARNER: And he's not a shareholder
5 of the debtor?

6 MR. CROWN: No.

7 MR. WARNER: And, again, he's a party
8 that can sign on the debtor's bank accounts, correct?

9 MR. CROWN: Right. That is, Regis
10 providing the management services for the debtor, yes.

11 Incidentally, that's -- that's -- that's
12 the case in terms of prior to the bankruptcy also.

13 MR. WARNER: We've been talking about
14 the name TCI. That really stands for Transcontinental
15 Realty Investors, Inc., correct?

16 MR. CROWN: It does.

17 MR. WARNER: And that's a
18 publicly-traded entity?

19 MR. CROWN: It is.

20 MR. WARNER: Okay. And that entity
21 transferred some assets into the debtor somewhere
22 around late December 2010, correct?

23 MR. CROWN: Yes.

24 MR. WARNER: Did it transfer all of its
25 assets into the debtor?

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1 MR. CROWN: All of TCI's assets?

2 MR. WARNER: Yes.

3 MR. CROWN: No.

4 MR. WARNER: So TCI still has assets it
5 didn't transfer in, correct?

6 MR. CROWN: Yes.

7 MR. WARNER: Does TCI still own real
8 property that it did not transfer in?

9 MR. CROWN: Yes.

10 MR. WARNER: How did it decide, if you
11 know, which properties to transfer into the debtor and
12 which not to?

13 MR. CROWN: I was not a party to that --
14 that decision.

15 MR. WARNER: Did anybody tell you about
16 that decision?

17 MR. CROWN: Other than to say that these
18 were assets that were -- had performance problems, were
19 facing imminent or near-term foreclosure, and were
20 having generally difficult times --

21 MR. WARNER: Are there other assets --

22 MR. CROWN: -- no specifics.

23 MR. WARNER: -- I'm sorry.

24 Are there other assets owned by TCI that
25 didn't fall into that sort of category of having

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1 trouble?

2 MR. CROWN: Yes.

3 MR. WARNER: There are?

4 MR. CROWN: Yeah.

5 MR. WARNER: And those were not

6 transferred in?

7 MR. CROWN: Those that were -- were
8 flowing cash and covering their expenses and so on were
9 not put in.

10 MR. WARNER: I'd like you to look if you
11 would at the statement of financial affairs, Question
12 Number 21. It says that the -- the question asks for
13 the name of current partners, officers, directors and
14 shareholders.

15 The debtor is a C corporation, is it
16 not?

17 MR. CROWN: Yes.

18 MR. WARNER: Therefore it would have
19 officers, directors and shareholders, correct? Not
20 partners?

21 MR. CROWN: That's correct.

22 MR. WARNER: Mr. Akin is listed as the
23 president and a director holding a fifty percent
24 indirect interest -- or indirectly held.

25 What did you mean by the word

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1 "indirectly held"?

2 MR. CROWN: He holds it through other
3 entities --

4 MR. WARNER: What other entities?

5 MR. CROWN: -- and ultimately ABCLD
6 Properties, LLC, I believe.

7 MR. WARNER: Is that the holder of the
8 fifty percent interest?

9 MR. CROWN: I believe it's the holder of
10 the interest and he owns that proportionate share of
11 that entity.

12 MR. BUNCHER: And, Mike, that's set out
13 on Exhibit 1 to the debtor interview information, the
14 intermediate parties --

15 MR. WARNER: The steps?

16 MR. BUNCHER: Yes. It's Exhibit 1.

17 It says FRE is owned 100 percent by
18 ABCLD Properties, LLC, which ABCLD Properties is owned
19 100 percent by ABC Land & Development, Inc., and ABC
20 Land & Development, Inc. is owned 50 percent by Akin
21 and 50 percent by DTS Holdings, LLC, and DTS Holdings,
22 LLC, is owned 50 percent by Terry Shumate and 50
23 percent by Donna Shumate.

24 So that's -- that's how you get there.

25 MR. WARNER: So the 50 percent under

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1 Mr. Akin's name -- or across from Mr. Akin's name has
2 now been explained.

3 Let's look at the F. Terry Shumate and
4 the Donna Shumate, each holding a 25 percent indirectly
5 held. Does that also explain those two holdings?

6 MR. CROWN: Uh-huh.

7 MR. WARNER: Okay. And, sir, what's the
8 relationship between F. Terry Shumate and Donna
9 Shumate?

10 MR. CROWN: Husband and wife.

11 MR. WARNER: Would you then look now at
12 Question 22 for me, which -- let me -- let me just go
13 back to Question 21. I'm sorry.

14 If I read Question 21, 100 percent of
15 the debtor's equity is held indirectly by Mr. Akin,
16 Mr. Shumate and Ms. Shumate, correct? That would add
17 up to 100.

18 So if we now look at Question 22, it
19 lists nine entities or nine individuals that were
20 either former partners, officers, directors or
21 shareholders. Can you identify who of these nine were
22 former shareholders?

23 MR. CROWN: I do not know that.

24 MR. WARNER: Okay. Do you know who of
25 these nine were --

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1 MR. BUNCHER: Well, the question only
2 asks who the officers or directors were. And above, in
3 A, 22A, it says as to partners -- as to a partnership,
4 list each member.

5 MR. WARNER: Right.

6 MR. BUNCHER: And it's not a
7 partnership.

8 MR. WARNER: No. I understand that.
9 I'm just trying to --

10 MR. BUNCHER: The corporation was owned
11 as part of TCI. Fenton --

12 MR. CROWN: Park West II.

13 MR. BUNCHER: -- TCI. Park West II,
14 Inc. was the debtor's former name, so it was a
15 subsidiary entity underneath TCI.

16 MR. WARNER: Wholly owned by TCI?

17 MR. BUNCHER: Right.

18 MR. WARNER: Is that your understanding,
19 Mr. Crown?

20 MR. CROWN: Uh-huh.

21 MR. WARNER: So prior to December 22,
22 2010, the equity of the debtor was held by TCI. TCI
23 then transferred the equity of the debtor to Akin,
24 Shumate and Shumate for their entities, correct?

25 MR. CROWN: Well, that equity is also

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1 subject to, you know, buyer notes back to the former
2 entities.

3 MR. BUNCHER: Yeah. There was a note
4 given for the equity. ABCL Properties, LLC, acquired
5 the equity of the debtor from TCI in exchange for a
6 note, and I think the note was sixty-plus million
7 dollars.

8 MR. CROWN: It turned out -- after some
9 netting out, it turned out to be -- well, directly
10 about 49 million dollars.

11 MR. WARNER: Prior to December 22, 2010,
12 the debtor owned the Fenton building -- we'll call it
13 the Fenton building. You'll know what I'm talking
14 about when I say that?

15 MR. CROWN: I do.

16 MR. WARNER: Did it own any other real
17 property prior to December 22?

18 MR. CROWN: There's some acreage
19 adjacent to, contiguous to the building that is part of
20 that -- that ownership.

21 MR. WARNER: Is it owned -- was it owned
22 by the debtor or was it owned by other entities that
23 transferred it in?

24 MR. CROWN: No. It was owned -- it was
25 all part of that Fenton Center project. In other

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1 words, there's two buildings, connected buildings, and
2 then there's also adjacent land that's all part of the
3 Fenton Center.

4 MR. WARNER: Other than that, did it own
5 any other real property? Other than what you just
6 defined as sort of a Fenton Center?

7 MR. CROWN: To my knowledge, no.

8 MR. WARNER: Did it own any other
9 assets?

10 MR. CROWN: Well, it did own the Park
11 West II Association, which is a property management
12 association. Essentially revenue in/revenue out
13 matching to provide services to the Fenton Center.

14 MR. BUNCHER: It also I think owned a
15 bunch of equipment and furniture and stuff like that
16 that goes along with the building.

17 MR. WARNER: In the Fenton Center?

18 MR. BUNCHER: Right.

19 MR. CROWN: Right. But nothing
20 unassociated with the Fenton Center.

21 MR. WARNER: I'd like now to turn to
22 Mr. Morgan, sir.

23 If I remember your testimony at the
24 first day of the hearings on the motion to dismiss, I
25 think you said that you reviewed the transactions

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1 whereby the debtor would acquire some 38 or so parcels
2 of property, correct?

3 MR. MORGAN: Yes.

4 MR. WARNER: Did you approve doing those
5 acquisitions by the debtor?

6 MR. MORGAN: No.

7 MR. WARNER: And that's because you were
8 not part of the debtor at the time those were done?

9 MR. MORGAN: I was officially an
10 officer, but I had not accepted the role of -- of
11 supervising or being part of the restructuring process
12 at that time.

13 MR. WARNER: So all of those transfers
14 in occurred prior to your approval process. So do you
15 know who approved all of those transfers in on behalf
16 of the debtor?

17 MR. MORGAN: I do not.

18 MR. BUNCHER: There's resolutions that
19 have been produced of the debtor that authorize all of
20 the transactions on behalf of the debtor.

21 MR. WARNER: Right. And that's a
22 corporate resolution.

23 I'm trying to find out if the gentleman
24 who is now running the show approved those transactions
25 in. And you're saying you did not approve those?

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1 MR. MORGAN: No.

2 MR. WARNER: In looking at those
3 transactions now, would you have approved them had you
4 been asked to?

5 MR. MORGAN: Well, I approved them close
6 -- close to the presentation because I -- I looked at
7 them and decided there was enough value that was worth
8 my spending my time and effort trying to make the
9 debtor whole.

10 MR. WARNER: So you would have approved,
11 if you were asked to in the first instance, the
12 transferring of all 38 properties?

13 MR. MORGAN: I can't directly --
14 directly answer. I don't know. It's hard to say. I
15 approved the process of taking over supervision of it
16 based on what I saw as value.

17 MR. WARNER: Well, let me ask the
18 question a different way.

19 If you had your choice now to redo it,
20 would you have not taken all 38 properties in?

21 MR. MORGAN: I can't say I would have
22 taken all 38 in, but, in the whole, I would have, yes.

23 MR. WARNER: Which properties would you
24 have not taken in had you made that decision -- had you
25 been asked to make that decision?

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1 MR. MORGAN: Well, you're getting
2 specific now. I don't know. I'm saying I can't say
3 for every specific one that I would have taken them in,
4 but I do know that I approved it as a whole.

5 MR. WARNER: I believe you testified
6 that you executed an agreement between the debtor and
7 Regis -- and I apologize, I don't know Regis's full
8 name. What is Regis -- let me start there.

9 What is Regis's full name?

10 MR. MORGAN: Regis Property Management
11 or something of that ilk.

12 MR. WARNER: So if I use the term Regis,
13 you know I'm talking about Regis Property Management?

14 MR. MORGAN: Yes.

15 MR. WARNER: You executed an agreement
16 between Regis and the debtor, is that correct?

17 MR. MORGAN: That's correct.

18 MR. WARNER: And you did that prior to
19 bankruptcy, is that correct?

20 MR. MORGAN: No, I did that close to
21 bankruptcy.

22 MR. WARNER: Close to bankruptcy. Okay.

23 And that is for management of the
24 operating properties or a specific property?

25 MR. MORGAN: The operating properties.

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1 MR. WARNER: All of them?

2 MR. MORGAN: Yes.

3 MR. WARNER: Okay. And did you read the
4 agreement before you signed it?

5 MR. MORGAN: Yes.

6 MR. WARNER: And is it the same
7 agreement that existed between the debtor and Regis
8 prior to bankruptcy?

9 MR. MORGAN: There was one particular
10 issue that I was concerned about, and it had to do with
11 the -- the fact of -- I don't remember it overriding
12 commission the other -- but I seem to remember that in
13 the old agreement they had, you know, a different --
14 different percentage, and then they would roll down
15 into a -- into subcontracting decisions. But -- and
16 there were some issues regarding leasing commissions I
17 wanted cleaned up, but essentially it was the same.

18 MR. WARNER: The terms are essentially
19 the same?

20 So you didn't bother to change any of
21 the terms for the benefit of the debtor?

22 MR. MORGAN: Well, like -- like you
23 said, I -- I did make -- I made sure that it was three
24 percent income only of the gross income, and I went
25 back to the commissions to be sure that the commissions

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1 were fair. And I did have them check the commission
2 structure to be sure that there was no overriding
3 commissions up to the management.

4 MS. DURHAM: Your ten minutes is all
5 used.

6 MR. WARNER: That was a very quick ten
7 minutes.

8 MS. DURHAM: You have a little bit more
9 or --

10 MR. WARNER: Where I'm from, time goes a
11 long way. I just have a few little quick questions.

12 MS. DURHAM: All right.

13 MR. MORGAN: The apartments went
14 directly to Sun Shakes. Prime -- none of the Prime
15 entities are involved in -- (inaudible) -- direct
16 property (inaudible).

17 MR. WARNER: Let's talk about the Fenton
18 Center, which we've just talked about. So you know
19 what I'm talking about when I use the Fenton Center?

20 MR. MORGAN: Yes.

21 MR. WARNER: Have all tenants in the
22 Fenton Center paid their January 2011 rent?

23 MR. MORGAN: I don't think so.

24 MR. WARNER: Okay. Do you know who
25 hasn't of the tenants?

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1 MR. MORGAN: I don't. But there is a --
2 there is a tracking -- there is a tracking mechanism
3 that the property management people are doing, and I
4 haven't received an updated report as of yesterday.

5 MR. WARNER: Is that something you can
6 provide to me?

7 MR. MORGAN: Yes.

8 MR. WARNER: Okay. Can I get that later
9 today?

10 MR. MORGAN: Yes.

11 MR. WARNER: Okay.

12 MR. BUNCHER: I'm sorry. What was it?

13 MR. WARNER: It's a list of the tenants
14 that have not paid their January 2011 rent.

15 Does the debtor, any of its agents,
16 officers, representatives, affiliates, have any rent
17 that has been paid by a tenant for the month of January
18 or February 2011 in its possession that has not been
19 put into the lock box?

20 MR. MORGAN: There was a meeting
21 yesterday in which that question was answered.

22 MR. WARNER: That question was answered?

23 MR. MORGAN: Yeah, that question -- I
24 got the answer to that question.

25 MR. WARNER: So who asked the question?

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1 MR. MORGAN: I did.
2 MR. WARNER: And who did you ask it of?
3 MR. MORGAN: Of Mr. Conley.
4 MR. WARNER: Of Mr. Conley. Okay.
5 MR. MORGAN: Yes. And there are some 61
6 thousand dollars worth of rents that have been
7 collected. And I instructed them to give a detailed
8 accounting of those rents, where they came from and to
9 wire those funds into the lock box today.
10 MR. WARNER: To wire them in today?
11 MR. MORGAN: Yes.
12 MR. WARNER: And for what period were
13 those collected? Do you know? What did he tell you?
14 MR. MORGAN: I didn't -- I didn't ask
15 that. It was just rents that were collected after --
16 after December 23rd.
17 MR. WARNER: Okay. So you didn't ask
18 the question when they came in or for what period? You
19 just know that they came in and they haven't been put
20 into the lock box?
21 MR. MORGAN: All of that will be
22 provided in the schedule.
23 MR. WARNER: In the schedule you're
24 going to send me?
25 MR. MORGAN: Yes.

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1 MR. WARNER: Very good. So it will tell
2 the date it came in to you?

3 MR. MORGAN: Yes.

4 MR. WARNER: Very good.

5 MS. DURHAM: Okay.

6 MR. WARNER: Yes. Thank you. I
7 appreciate the eleven minutes.

8 MS. DURHAM: You have questions? Yes.
9 Go ahead.

10 MS. HARTWICK: Good morning, sir. My
11 name is Jo Hartwick. I'm with Stutzman, Bromberg,
12 Esserman & Plifka, and I represent the lender, who is
13 an Amoco building in New Orleans, Petra.

14 MR. MORGAN: Uh-huh.

15 MS. HARTWICK: We can call it Petra so I
16 don't have to try to repeat that entire name.

17 You testified earlier, sir, that there
18 is insurance in place on all of the operating of these
19 buildings. Is that correct?

20 MR. MORGAN: There is.

21 MS. HARTWICK: Do you know if in the
22 instance of the Amoco building if Petra is an
23 additional insured name on the --

24 MR. MORGAN: I believe they are, yes, as
25 are all the mortgagees for the -- (inaudible).

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1 MS. HARTWICK: When you were talking
2 about your understanding of why this bankruptcy was
3 filed and some of the reasons for it, I believe you
4 stated that leasing was way down for the most part. Is
5 that your testimony with regard to the Amoco building?
6 Do you consider that leasing was way down --

7 MR. MORGAN: Well, the Amoco building is
8 -- first of all, is still somewhat reeling from the
9 aftereffects of Katrina, as is all of New Orleans.

10 Another thing has happened in New
11 Orleans, and that is that the public sector which
12 provides a good deal of the occupancy in downtown New
13 Orleans -- and when I say that, I mean the Orleans
14 Parish, the city of New Orleans, the state of Louisiana
15 -- is currently in a bit of a flux in that as part of
16 the deal to keep the New Orleans Saints in Louisiana
17 and in New Orleans, a deal was cut with the owner of
18 the Saints, Tom Benson, to move many of the public --
19 state -- this was -- I believe this was state agencies
20 from their current residencies at the conclusion of
21 their leases to a new building that Benson had
22 rehabbed, about a 300,000-square-foot building that is
23 just opening up now.

24 And so we've got a couple of assets down
25 there -- 1010 Common and this one in particular -- that

1 Page 54
2
3

are -- are losing some tenancy to that -- or are in the
process of losing some tenancy.

So there's -- there's a -- it's a
stagnant market from the growth standpoint, and it's
also one that is kind of in flux in terms of movement.

MS. HARTWICK: I want to draw your
attention, sir, to Page 4 of 17 of -- it's the rent
roll for Amoco -- (inaudible).

MR. MORGAN: Hold on for one second.

MR. BUNCHER: I'm sorry. Where is that?

MS. HARTWICK: It's part of the -- one
of the schedules, and I'm thinking that it's an exhibit
to the real property schedule.

MR. MORGAN: What does it -- what does
it say at the top?

MS. HARTWICK: It says Amoco office
building.

MR. BUNCHER: Security deposit report.
On the back of Schedule F.

MS. HARTWICK: Is that it?

MR. MORGAN: No. It's -- it's --
actually, it's a debt.

MS. HARTWICK: Okay.

MR. MORGAN: There are security deposits
that were owed to the tenants, and that would be an

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1 attachment to F, Schedule F.

2 MS. HARTWICK: So the only tenants of
3 the Amoco building are listed on this document, so I
4 think we're all looking at --

5 MR. BUNCHER: It's like this.

6 MR. MORGAN: Okay. Go ahead.

7 MS. HARTWICK: -- are those that have a
8 -- for whom the debtor have a security deposit and
9 therefore a debt --

10 MR. MORGAN: That's correct.

11 MS. HARTWICK: -- to the tenant?

12 MR. MORGAN: And the far right column
13 would reflect the amount of that security deposit.

14 MS. HARTWICK: So the city of New
15 Orleans, for example, is listed on here, although they
16 don't have a security deposit?

17 MR. MORGAN: Yeah. They are a tenant,
18 but they -- the deal was cut without them having a
19 security deposit, given their public sector nature.

20 MS. HARTWICK: Let me ask this a little
21 bit differently then.

22 To your knowledge, sir, is every tenant
23 that is currently occupying the Amoco office building
24 listed on this document?

25 MR. MORGAN: I don't know the answer to

1 Page 56
2

that question. I -- these are all the ones that have
security deposits.

MS. HARTWICK: With the exception of the
city, which the city and other --

MR. MORGAN: Yes. Yes. But I do not
know the answer to that question.

MS. HARTWICK: Mr. Morgan, I would like
to follow up with a question.

Do you -- I have a followup to a
question that I asked about during your deposition.

It's my understanding that there is a
tenant in the Amoco building that occupies a fairly
significant amount of space that does not have to pay
any rent because it is related to, affiliated -- I
don't want to use any improper word -- but there's some
connection, I'll put it that way, with either the
debtor or the current -- or the former owner of the
building.

MR. MORGAN: In my review of the
budgets, I did not see any reference to any such thing.
You mentioned the name of it, and I've forgotten what
it was --

MS. HARTWICK: I've forgotten too. I
provided it to your counsel.

MR. MORGAN: Baronne. Baronne

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1 something.

2 MS. HARTWICK: Yes.

3 MR. MORGAN: I didn't see that tenant on
4 any -- any roll in the budget or the rent rolls.

5 MS. HARTWICK: But you don't know
6 whether or not -- or do you know, sir, whether Baronne
7 -- and we'll call it Baronne because I know that is
8 only part of the name -- do you know, sir, if Baronne
9 is a tenant that is actually in the building?

10 MR. MORGAN: I don't think they are.

11 MS. HARTWICK: Mr. Crown testified that
12 -- and I just want to make sure I understood your
13 testimony correctly -- that there are separate accounts
14 -- separate DIP accounts for each of the operating
15 entities --

16 MR. MORGAN: There are, yes.

17 MS. HARTWICK: So there is a separate
18 account for Amoco?

19 MR. MORGAN: Yes. And the security
20 deposits, to the extent there are any -- any funds in
21 of those, there are -- those are separate also.

22 MS. HARTWICK: Okay. And are rent
23 paying separate from everything else?

24 MR. MORGAN: Separate from all other
25 assets. And only revenue from that asset goes into

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1 that DIP account and expenses for that asset come out
2 of that DIP account. No mixing and matching.

3 MS. HARTWICK: Thank you. Pass the
4 witness.

5 MS. DURHAM: Mark?

6 MR. ANDREWS: Yes. Sorry I came in
7 late. Mark Andrews. I represent RMR Investments. I
8 just have a few questions, and I apologize --

9 MS. DURHAM: And, Mark, since you came
10 in late, you have Joe-Joe and Peggy Joslin (phonetic)
11 on the telephone right here.

12 MR. ANDREWS: Okay.

13 MS. DURHAM: And Steve Sakonchick on the
14 telephone right here.

15 MR. ANDREWS: Okay. Let me -- let me
16 ask these questions to you.

17 First of all, do you know Danny Moos?

18 MR. MORGAN: I do.

19 MR. ANDREWS: All right. And he holds
20 no current position with the debtor, as I understand
21 the schedule. Is that correct?

22 MR. MORGAN: I believe that is correct,
23 yes.

24 MR. ANDREWS: All right. And can you
25 tell me whether or not the connection with Mr. Moos --

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1 do you know whether he held a position in connection
2 with the Woodmont cases that were filed in front of
3 Judge Hill this past year?

4 MR. MORGAN: Only to the extent that
5 he's the president of TCI, and TCI was one of the
6 supporters of those claims and an interested party who
7 has 75 percent beneficial ownership of those entities,
8 yes.

9 MR. ANDREWS: All right. Do you know
10 Mr. Shelley?

11 MR. MORGAN: Mister?

12 MR. ANDREWS: Shelley.

13 MR. MORGAN: Steven Shelley?

14 MR. ANDREWS: Yes.

15 MR. MORGAN: Yes.

16 MR. ANDREWS: Okay. Can you tell me
17 what position he holds with -- (inaudible).

18 MR. MORGAN: He's a senior vice
19 president of both Prime and TCI.

20 MR. ANDREWS: All right. Do you have
21 any contact with Mr. Shelley?

22 MR. MORGAN: I do.

23 MR. ANDREWS: All right. Would you be
24 familiar with Mr. Shelley's signature?

25 MR. MORGAN: Yeah, I'd probably

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1 recognize it, yeah.

2 MR. ANDREWS: I'd like to show you a
3 document and just ask you if you could identify his
4 signature. Look at the second page of that, the
5 right-hand side.

6 MR. MORGAN: Yeah. That looks like
7 Steven's signature. All right.

8 MR. ANDREWS: Can I see that?

9 MR. MORGAN: Sure.

10 MR. ANDREWS: And I guess for purposes
11 of the record I'll have that made an exhibit if you
12 want it for part of the record.

13 MS. DURHAM: What is it?

14 MR. ANDREWS: It's a -- it's a
15 forbearance agreement.

16 MS. DURHAM: Okay. No. I'll give it
17 back to you because --

18 MR. ANDREWS: Okay.

19 MS. DURHAM: -- it's dated 12/6/2010 --

20 MR. ANDREWS: Right.

21 MS. DURHAM: -- and then signed by
22 Shelley 12/7/10.

23 MR. ANDREWS: Right.

24 Did you -- did you ever see this
25 forbearance agreement before --

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1 MR. MORGAN: I have not.

2 MR. ANDREWS: Okay.

3 MR. MORGAN: Well, you mean before right
4 now?

5 MR. ANDREWS: Before right now.

6 MR. MORGAN: I have seen it attached to,
7 I believe, either a motion or some kind of document
8 filed by you, I believe.

9 MR. ANDREWS: All right. But, other
10 than that, you don't have --

11 MR. MORGAN: Related to this bankruptcy
12 case. No.

13 MR. ANDREWS: -- you don't have any
14 independent knowledge of this document?

15 MR. MORGAN: No, I was not aware of it
16 before it came to -- it surfaced related to this
17 bankruptcy.

18 MR. ANDREWS: All right. Are you
19 familiar with a lender called RMR Investments, Inc.?

20 MR. MORGAN: I am.

21 MR. ANDREWS: And are you familiar with
22 the properties that are part of the Fenton Real Estate
23 bankruptcy that were transferred in and all the RMR
24 claims there have been?

25 MR. MORGAN: Yes.

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1 MR. ANDREWS: In connection with those
2 properties, is it okay with you if I refer to them as
3 Crowley Wilmer, Stanley and then Hollywood?

4 MR. MORGAN: That's okay.

5 MR. ANDREWS: You know what I'm talking
6 about --

7 MR. MORGAN: Yes.

8 MR. ANDREWS: -- if I refer --

9 MR. MORGAN: Sure.

10 MR. ANDREWS: -- okay. With respect to
11 Crowley Wilmer, has that property been listed for sale
12 with a broker in recent -- say the past six months?

13 MR. MORGAN: I don't know whether it is
14 listed with a broker. I know in general our land --
15 our -- TCI's land holding, which Prime oversaw, were
16 generally all for sale. I mean, everything was for
17 sale. So I don't know whether there were any active
18 signed agreements with any brokers or not.

19 MR. ANDREWS: Okay. And given that, I
20 take it you don't know whether or not there was a
21 specific list price on that property?

22 MR. MORGAN: I do not. I was not
23 involved in that at all.

24 MR. ANDREWS: All right. I'm going to
25 ask you the same question with respect to Stanley and

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1 Hollywood.

2 MR. MORGAN: No knowledge.

3 MR. ANDREWS: No knowledge.

4 Do you -- do you know whether either of
5 them were listed?

6 MR. MORGAN: I do not know.

7 MR. ANDREWS: All right. Is there a
8 particular broker that was preferred by I'll call it
9 the TCI family of companies? Did you -- did you engage
10 a particular brokerage firm commonly that would have
11 been used in connection with your properties?

12 MR. MORGAN: No. I've seen -- again, I
13 was not involved in that, but I've seen many brokers
14 from Grubb & Ellis to Jones Lang LaSalle -- and all of
15 the major players in -- in the Dallas-Fort Worth area
16 for those located in Dallas-Fort Worth.

17 MR. ANDREWS: And in the -- in the area
18 of the RMR properties, just given the geography, could
19 you tell me whether there were any brokers that would
20 have been more commonly used in that area by the TCI
21 family of companies?

22 MR. MORGAN: Oh, there have been -- I
23 know Grubb & Ellis is very -- very active in -- in the
24 Mercer Crossing area, which some of these properties
25 are located, so they are -- they are certainly

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1 involved.

2 Like I say, I've seen Jones Lang LaSalle
3 mentioned as -- as a major player in terms of
4 brokerage, but I -- I don't know as regards the
5 individual properties.

6 MR. ANDREWS: With respect to the status
7 of payments on taxes, I -- it's my understanding, and
8 I'd like you to confirm, that with respect to the taxes
9 on the Crowley Wilmer properties, when were those last
10 paid?

11 MR. MORGAN: The only taxes that are
12 owing on any of these properties are 2010 vintage. So
13 if there's a -- if there's a tax payable, then it's the
14 2010 tax.

15 MR. ANDREWS: And I take it that there
16 is no escrow for payment of 2010 taxes for any of the
17 three RMR properties?

18 MR. MORGAN: There are not.

19 MR. ANDREWS: All right. And I take it
20 that, now we're in 2011, the taxes will be due at the
21 end of this year, there is no ongoing escrow for 2011
22 for any of these properties.

23 MR. MORGAN: At the moment there is not.

24 MR. ANDREWS: All right. I'll pass the
25 witness.

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1 MS. DURHAM: The phone people, anybody
2 have -- Mr. Sakonchick, do you have questions you want
3 to ask if you're still there?

4 MR. SAKONCHICK: I'd just like to -- can
5 you hear me?

6 MS. DURHAM: Yeah, now we can. Do you
7 have questions you want to ask?

8 MR. SAKONCHICK: Let me get it on. Yes.
9 You had mentioned something about not
10 being able to get any renewals of your loan obligations
11 at reasonable rates. What type of lenders were you
12 approaching?

13 MR. MORGAN: Well, I was not involved in
14 that process, but I know that people, including
15 Mr. Shelley and Capital Markets Group, were seeking
16 those -- that kind of relief.

17 The first efforts, of course, was made with
18 the existing lenders to try to extend the loans on
19 terms that would take consideration of the current
20 marketplace where lower rates are prevalent and revenue
21 is very low.

22 In the absence of that, we -- I know the
23 Capital Markets people went out to market in general
24 and were constantly in search of lenders of all
25 varieties that would be willing to lend on loan --

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1 excuse me -- on land, which was very difficult to get,
2 or even on improved property.

3 MR. SAKONCHICK: On the improved
4 property, what kind of interest rates were they getting
5 quoted?

6 MR. MORGAN: I don't know.

7 MR. SAKONCHICK: All right. Who exactly
8 do I need to talk to to find that out?

9 MR. MORGAN: The best source of that
10 would probably be Steven Shelley.

11 MR. SAKONCHICK: And Mr. Shelley is not
12 here today?

13 MR. MORGAN: He is not here at the
14 moment, no.

15 MR. SAKONCHICK: And who is Mr. Shelley
16 with?

17 MR. MORGAN: Shelley is with TCI.

18 MR. SAKONCHICK: All right. And
19 Mr. Gaither with your law firm, or your law firm
20 representing here, has indicated there is 52 thousand
21 dollars in your cash collateral account for Parkway
22 North. There are currently an obligation that they're
23 going to be approved for 10 thousand dollars for
24 Reliant on the utility deposit. There are probably
25 about 33 thousand dollars needed for payment of the

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1 2010 taxes. Is the debtor willing to use that cash
2 collateral for purposes of paying that shortfall in the
3 2010 taxes?

4 MR. MORGAN: I didn't understand what he
5 said.

6 MR. BUNCHER: Could you repeat the
7 question? The person that needs to answer that is not
8 as close to the phone as I am. It would be David
9 Morgan, who is the vice president of the debtor.

10 MR. SAKONCHICK: All right. Mr. Morgan,
11 Mr. Gaither from the law firm representing the debtor
12 in this case has indicated that as of last Thursday
13 there was 52 thousand dollars in the cash collateral
14 account. I imagine that would have included most of
15 the collections from the February rents. There's also
16 going to be the March rents to be collected. There is
17 a 10 thousand dollar utility deposit that needs to be
18 paid to Reliant Energy. There is about a 33 thousand
19 dollar shortfall in the escrow account if we reinstate
20 it for the payment of ad valorem taxes for 2010.

21 Is the debtor willing to use 33 thousand
22 dollars in the cash collateral account for payment of
23 taxes?

24 MR. MORGAN: To the extent it's
25 available, yes.

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1 MR. SAKONCHICK: All right. Thank you.

2 That's all I have. Thank you.

3 MS. DURHAM: Okay. Anyone else on the
4 phone have questions?

5 All right. Then we're going to swing
6 back around to Mr. Weitman. Is that -- what -- the new
7 guys will all have another ten minutes?

8 MR. WEITMAN: We have a few more.

9 MS. DURHAM: Sure. We're going to give
10 you ten more minutes, and then we'll go around again.

11 MR. WEITMAN: Thank you.

12 Mr. Crown, could you look at Schedule H,
13 co-debtors, please.

14 MR. CROWN: All right.

15 MR. MORGAN: May I make one -- may I
16 make one insert?

17 MS. DURHAM: Yes.

18 MR. MORGAN: We are currently -- in our
19 cash collateral we are currently reserving the real
20 estate income taxes into a separate account for each
21 income-producing property from the month of filing
22 forward. So we now have deposited the January and we
23 will be depositing the February on the cash collateral
24 into a separate tax escrow account.

25 MR. BUNCHER: That's for the

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1 income-producing properties.

2 MR. MORGAN: Exactly.

3 MS. DURHAM: Did you hear that, Steve?

4 MR. SAKONCHICK: No. Say that again.

5 MR. MORGAN: I said, as to the cash
6 collateral, we are currently escrowing into a separate
7 tax escrow account on the income-producing properties
8 the real estate taxes, as per the cash collateral
9 order. They're going into a tax escrow account.

10 MR. SAKONCHICK: I understand that for
11 2011. I'm talking about the taxes that came due
12 January 31st for 2010.

13 MR. MORGAN: Same answer. I just wanted
14 to be sure that you knew we were escrowing for 2011.

15 MR. SAKONCHICK: Yeah. That was in the
16 budget, and that's what we approved on the budget. And
17 I'm aware of that. Thank you.

18 MR. WEITMAN: Mr. Crown, I've asked you
19 -- David Weitman for Wells Fargo -- Schedule H refers
20 to co-debtors. I want to try to understand the various
21 relationships.

22 I understand that you had roughly a
23 million four of unsecured creditors' claims from the
24 various transferror entities that were assumed by FRE
25 Real Estate. Correct?

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1 MR. CROWN: That's correct.

2 MR. WEITMAN: But even with the
3 assumption, aren't the trade creditors -- don't they
4 have debts owing by each of the transferror entities?

5 MR. CROWN: No.

6 MR. WEITMAN: You haven't -- I mean, is
7 there an agreement by the trade creditor -- let's just
8 say, for example, like TCI Amoco. And there is a
9 party that extended credit to TCI Amoco, correct? In
10 my example, if you follow along --

11 MR. CROWN: Go ahead. Go ahead.

12 MR. WEITMAN: -- let's say they extended
13 500 dollars worth of credit. Is not TCI Amoco still
14 liable and is not also FRE Real Estate liable for that
15 debt?

16 MR. CROWN: Well, the understanding of
17 the acquiring entities that -- that they would assume
18 the -- the -- the debts of the operating assets.

19 MR. WEITMAN: Right. But is not that
20 creditor still able to look to TCI Amoco for payment?

21 MR. BUNCHER: I'm not going -- you can
22 say your understanding, but he's asking you a legal
23 question about whether the original party is still
24 liable for the debt.

25 MR. WEITMAN: Isn't it?

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1 MR. BUNCHER: I'm not here to answer
2 your questions. He is, and he's a lay person, so --

3 MR. CROWN: Yeah. I mean, I don't know
4 how -- I don't know how to answer that. I'm not an
5 attorney, so I can't --

6 MS. DURHAM: So what do you think?

7 MR. WEITMAN: So wouldn't that make each
8 of those trade creditors a party that should be listed
9 on Schedule H dealing with co-debtors?

10 MS. DURHAM: What do you think, Doug?

11 MR. BUNCHER: Trade creditors? You mean
12 the original borrower -- you mean the original entity?
13 The transferror entity?

14 MR. WEITMAN: Yes. Would potentially --

15 MR. BUNCHER: If they -- well, first of
16 all, the transferror entities are all shells. They
17 don't have any assets for anybody to collect from. If
18 somebody sued the transferror entity and got a
19 judgment, the transferror entity would then have a
20 claim back against the debtor, I guess, to the extent
21 it actually paid it.

22 But, again, theoretically, yes.

23 Theoretically somebody could sue the transferror
24 entities that have no assets to try to recover their
25 claims.

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1 MR. WEITMAN: Well, just by example,
2 like Petra Mortgage on the first one here, they're --
3 the obligor on that debt is the TCI Amoco entity that
4 changed its name, correct?

5 MR. CROWN: That's correct.

6 MR. WEITMAN: And so -- so they have an
7 obligation -- they have a debt owing by TCI Amoco, and
8 that has now been also assumed by FRE Real Estate.
9 Correct? Why would that not be the same for every
10 single trade creditor of TCI Amoco and every other
11 transferror entity?

12 MR. BUNCHER: Yes. Theoretically,
13 you're correct.

14 MR. WEITMAN: Why would it not also be
15 the same for every person that provided a security
16 deposit that's a tenant, that they can look to their
17 original transferror entity, right, and now FRE Real
18 Estate, in which case those entities are co-debtors?
19 Is this not inaccurate then by your not listing every
20 other trade creditor and party with a security deposit
21 or that gave a security deposit?

22 MR. BUNCHER: Yeah. I mean, if we could
23 -- we could -- we could list all the original
24 transferors and -- and say that these creditors could
25 theoretically sue the original transferror that has no

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1 assets, at which point that transffor would then sue
2 the debtor or assert a claim against the debtor,
3 saying, hey, debtor, you assumed this debt by a
4 contract, so technically you're correct --

5 MS. DURHAM: But the other way, if
6 you're the creditor, you should know that, well, you've
7 got FRE on the hook, but you also never let the other
8 guy off the hook.

9 MR. BUNCHER: Correct.

10 MS. DURHAM: The transffor.

11 MR. BUNCHER: Right.

12 MS. DURHAM: I'd look at it --

13 MR. BUNCHER: Sure.

14 MS. DURHAM: -- from the --

15 MR. BUNCHER: Sure.

16 MS. DURHAM: -- smaller person's point
17 of view --

18 MR. BUNCHER: Sure.

19 MS. DURHAM: -- and then TCI could pay
20 it.

21 And it's also my understanding that --

22 MR. WEITMAN: I was just going to say
23 that I think theoretically you could add 157 names to
24 this list --

25 MS. DURHAM: Yeah.

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1 MR. WEITMAN: -- of guys that you owed
2 \$11.62 to.

3 MS. DURHAM: Right.

4 MR. WEITMAN: But I don't see that
5 there's anything gained by that in the understanding of
6 anybody.

7 MS. DURHAM: Well, the next step then is
8 who gets to vote on the plan, and do you include all
9 those --

10 MR. BUNCHER: Well, they're -- the
11 creditors are already listed --

12 MS. DURHAM: They're in here.

13 MR. BUNCHER: -- as creditors.

14 MS. DURHAM: They're all in there.

15 MR. BUNCHER: Yeah.

16 MR. WEITMAN: They're all in here as
17 owing --

18 MS. DURHAM: And is the transferror
19 going to pay any of those for any other reasons?

20 MR. BUNCHER: No. No, they're going to
21 get --

22 MS. DURHAM: Ancillary reason to pay
23 them or --

24 MR. BUNCHER: They haven't asked us to
25 pay them.

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1 MS. DURHAM: I thought you said that
2 there were some properties retained.

3 MR. BUNCHER: By the parent company,
4 Transcontinental Realty Investors.

5 MS. DURHAM: Okay.

6 MR. BUNCHER: But not by the transferree
7 -- transferror sub --

8 MS. DURHAM: Okay.

9 MR. BUNCHER: -- subsidiaries.

10 MR. WEITMAN: Were you responsible for
11 retaining the services of any of those law firms that
12 go out there and protest the tax assessments?

13 MR. CROWN: I was not. There was --
14 there was a tax group within Prime that handles that.

15 MR. WEITMAN: And were most of those
16 properties subject to protest?

17 MR. CROWN: Many were. I will not say
18 all were, but -- but many were, sure.

19 MR. WEITMAN: Okay. And if you would
20 look at Schedule F, the unsecured buyer notes payable.

21 MR. CROWN: Okay.

22 MR. BUNCHER: The attachments?

23 MR. WEITMAN: Yes, sir. Attachment
24 Exhibit, Page 17 of 17, if you've got that.

25 MR. CROWN: All right.

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1 MR. WEITMAN: Now, the amount of that
2 claim is not -- do you have that, Mr. Crown?

3 MR. CROWN: Yes.

4 MR. BUNCHER: That attachment.

5 It's near the end of Schedule F, and it
6 says 17 of 17.

7 MR. WEITMAN: Now, you're familiar with
8 each of those assets, correct?

9 MR. CROWN: I am.

10 MR. WEITMAN: And are you also familiar
11 with the valuations that I've recently been introducing
12 to evidence from the -- from the records of the
13 lenders?

14 MR. CROWN: From the records of the
15 lenders? You mean the various appraisals that
16 lenders --

17 MR. WEITMAN: Yes.

18 MR. CROWN: I'm not very familiar with
19 them. I'm generally familiar with them. Mr. Morgan is
20 more familiar than I.

21 MR. WEITMAN: Have -- have you had any
22 experience in selling any of these properties at
23 anything close to the older appraised values?

24 MR. CROWN: These properties?

25 MR. WEITMAN: Yes, sir.

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1 MR. CROWN: None of them have been sold,
2 so we don't have any --

3 MR. WEITMAN: Any trying to sell. I'm
4 sorry. Or marketing.

5 MR. CROWN: Well, a general -- a general
6 marketing program will be a part of the plan, but, as
7 of yet, it has not kicked off.

8 MR. WEITMAN: But as the -- one of the
9 principals of Prime Income, was not Prime Income
10 charged with the responsibility to try to sell or
11 refinance these properties for the last couple of
12 years?

13 MR. CROWN: Yes, but I was not involved
14 in that.

15 MR. WEITMAN: But you understand the
16 organization was?

17 MR. CROWN: The organization -- as I
18 said, generally all the assets of TCI and a couple of
19 the other companies are for sale at any given time.

20 MR. WEITMAN: And they've had no
21 success, obviously, because we're here --

22 MR. CROWN: Some are -- some are being
23 pursued more actively, placed with brokers and what
24 have you. Others are just generally acknowledged in
25 the community as Prime -- Prime -- excuse me -- TCI or

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1 ARI, Income Opportunity Real Estate Investors --
2 they'll all sell their properties if you give them a
3 good offer, so --

4 MR. WEITMAN: Have you any personal
5 firsthand knowledge of the recent inclusion of that
6 footnote 4?

7 MR. CROWN: Footnote 4.

8 MR. WEITMAN: See the footnote 4 on that
9 same Schedule F?

10 MR. CROWN: I know that this was the
11 outgrowth of a discussion that --

12 MR. WEITMAN: Why don't you just
13 summarize what you understand that to mean, please.

14 MR. CROWN: Upon the sale of any given
15 property, the proceeds of those -- of that sale, the
16 net proceeds after any selling costs will be applied
17 first to priority claims, second to secured claims, and
18 the third --

19 MR. WEITMAN: Excuse me. The secured
20 claim on that property?

21 MR. CROWN: On that property. This was
22 all per property.

23 MR. WEITMAN: Uh-huh.

24 MR. CROWN: And then, after that, to
25 unsecured claims --

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1 MR. WEITMAN: Of that property?

2 MR. CROWN: -- of that property. And if
3 there is anything left over at that point it will be
4 applied to the buyer note payable. To the extent that
5 that buyer note payable is totally satisfied, then
6 those funds will be available for administrative and
7 other costs. To the extent that that note is not
8 satisfied, any unsatisfied portion will move to the
9 back of the line of sale of all assets. Not just that
10 asset, but all assets.

11 MR. WEITMAN: So, if you will, let's say
12 there's net proceeds after payment of ad valorem taxes
13 and the secured claim on that property, would those
14 excess dollars be used to pay all of the other
15 unsecured creditors of FRE Real Estate or simply the
16 trade creditors of that entity before you get to trying
17 to satisfy the, quote, seller note?

18 MR. CROWN: Let's say you had a million
19 dollars left over from the sale of the property. After
20 you paid the taxes and after you paid the secured
21 creditor on that property, you would then pay the
22 unsecured creditors on that property.

23 Let's say there were a hundred thousand
24 gross, and then you had nine hundred thousand left in
25 your pocket, you would pay off or pay towards the

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1 seller note payable on that property.

2 If it satisfied that note and there were
3 any funds in excess of that note on that property --
4 let's say the note was eight hundred thousand dollars,
5 now you have a hundred thousand left. That hundred
6 thousand would be used for administrative and other --
7 other expenses of the total FRE.

8 MR. WEITMAN: Now, you were at the
9 hearing on February 3rd when Mr. Morgan testified,
10 correct?

11 MR. CROWN: Yes.

12 MR. WEITMAN: Now there's -- what you
13 just described -- you know, describing this footnote 4,
14 that's nowhere in the purchase agreement or the note,
15 correct?

16 MR. CROWN: I -- I don't believe it is,
17 no.

18 MR. WEITMAN: And this is just as a
19 product of -- is it your discussions with selling --

20 MR. CROWN: Mr. Morgan's discussion.

21 MR. WEITMAN: Okay. So you just
22 captured what Mr. Morgan told you --

23 MR. CROWN: Yes.

24 MR. WEITMAN: -- included in the
25 footnote 4?

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1 MR. CROWN: Yes.

2 MR. WEITMAN: You were not a party to
3 any of those discussions?

4 MR. CROWN: I discussed with him, but I
5 did not discuss it with the individual that he
6 discussed it with.

7 MR. WEITMAN: Okay. And there are no
8 documents other than your inserting footnote 4?

9 MR. CROWN: No. Just that there was a
10 verbal discussion and understanding and then a
11 commitment to it in the -- in the bankruptcy filing.

12 MR. WEITMAN: Thank you. Pass the
13 witness.

14 MS. DURHAM: Okay. We had three new
15 people come in -- sorry to trump you. Do any of the
16 new people want to ask questions? And, if you do, just
17 state your name for the recording.

18 Dennis? Yeah, it would be helpful.
19 There's also people on the telephone.

20 MR. OLSON: Dennis Olson. I'm
21 representing the Bank of Weatherford on a piece of the
22 property which is not income producing.

23 My question in followup to Mr. Weitman,
24 are you telling the court and creditors that nine
25 hundred thousand dollars excess in the hypothetical

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1 that we were just talking about would go to the entity
2 that held the seller note instead of going to other
3 creditors in the bankruptcy?

4 MR. CROWN: Once the creditors,
5 priority, secured and unsecured, for the given excess
6 are satisfied, the next in line would be to pay off of
7 that seller note payable or buyer note payable.

8 MR. OLSON: So is it your position --

9 MR. CROWN: To the extent that that is
10 not covered, then there would be no distribution. To
11 the extent it is covered, there would be monies left
12 over that would be used for the entire authority.

13 MR. OLSON: My point is, your position
14 is that money would first go to the holder of the
15 seller note and not to the other creditors of that --

16 MR. CROWN: That is my understanding on
17 the sale of an individual asset.

18 MR. OLSON: So you would want the
19 insiders of FRE to get their money ahead of the other
20 creditors of FRE?

21 MR. CROWN: Well, that's what's been
22 committed to in this -- in this document.

23 MR. OLSON: Just in the schedules, no
24 place else?

25 MR. CROWN: Just in the schedules. Not

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1 in a plan. It's subject to -- to consideration and
2 discussion. At this point in time, that's what's been
3 proposed, yes.

4 Now, I was not -- again, I was not a
5 party to the decision to do that, except as I discussed
6 it with Mr. Morgan.

7 MR. OLSON: So, for those of us that
8 have properties that are not income producing who have
9 been thwarted repeatedly in trying to foreclose on
10 their properties, why isn't that indicia of bad faith
11 in making that transfer and filing this case?

12 MR. CROWN: Well, remember, the revenues
13 we're talking about -- if the revenues we're talking
14 about are for the sale of one of Mr. -- is it Weitman?

15 MR. WEITMAN: Yes, sir.

16 MR. CROWN: -- one of Mr. Weitman's
17 client's assets, that's unrelated to your client's
18 assets.

19 MR. OLSON: Well, how many bankruptcies
20 did you file?

21 MR. CROWN: One.

22 MR. OLSON: And aren't all of these
23 people creditors in the bankruptcy that you filed?

24 MR. CROWN: They are.

25 MR. OLSON: And before you made these

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1 transfers, none of these people were creditors of FRE,
2 were they?

3 MR. CROWN: The note payable folders,
4 the folders of those -- those notes from the transfers,
5 they weren't, but that was -- that was determined to be
6 the -- the equity that those people had in that
7 property.

8 MR. OLSON: Well, why would the equity
9 that those people had go ahead of the arm's-length
10 third-party creditors of this entity that you created?

11 MR. CROWN: Only to the extent that we
12 tried to look at it individually asset by asset.

13 MR. OLSON: Well, I thought that you
14 filed this as a substantive case instead of nineteen
15 separate cases.

16 MR. CROWN: We did. Well, it was filed.
17 I didn't, but the debtor did.

18 MS. DURHAM: You got a problem with that
19 -- with that idea?

20 MR. OLSON: I think so.

21 MS. DURHAM: You see that?

22 MR. BUNCHER: Yeah. Well, I mean, we'll
23 deal with that. I mean, we haven't put forth a plan
24 yet. This is what -- this is what -- this footnote was
25 what has been discussed and agreed to, as I understand

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1 it, between the debtor and what -- subject to further
2 discussion and modification as to what we end up
3 putting in the plan, well, that hasn't been put forth
4 yet.

5 MR. OLSON: Well, just as a heads-up,
6 you have until the 17th to have a better answer for us.
7 I think that -- (inaudible).

8 MS. DURHAM: Because it would seem that
9 those -- the note payable holders, as you're referring
10 to them, are insiders, and they would be at the bottom
11 of the payment list after everybody and all of the
12 pieces of property are settled. That's what it looks
13 like to me from what's on file.

14 UNIDENTIFIED SPEAKER: And their
15 deficiency claims.

16 MS. DURHAM: And their deficiency
17 claims. They're like the last guy to get paid, the
18 note payable guy.

19 And I appreciate the fact that you just
20 disclosed it, what the thought process was in the
21 schedules, so everybody could see who's on first.

22 But in the bankruptcy priority, if
23 you're doing this in the bankruptcy court, as far as I
24 can tell, those guys are -- of course, I'm not going to
25 decide, the judge will decide that at some point down

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1 the road, but that's what Mr. Olson is trying to get
2 at. Okay.

3 MR. WARNER: MaryFran, can I just do a
4 followup question on this issue?

5 MS. DURHAM: Yes. State your name.

6 MR. WARNER: I'm sorry. Michael Warner
7 again on behalf of HCMLP Special Services.

8 The footnote that was added to the
9 schedules was intended to sort of address what you just
10 defined as the waterfall, right, of how the money would
11 flow. And you've earlier testified that you're not an
12 officer, director or shareholder of this debtor. So I
13 guess I -- and I think I heard Mr. Morgan testify at
14 the hearing that that was also his understanding of his
15 structure.

16 Is that correct, Mr. Morgan?

17 MR. MORGAN: Correct.

18 MR. WARNER: But I've not heard the
19 recipient of the note that the debtor gave that was
20 then subsequently transferred -- but it really doesn't
21 matter -- whoever holds the note from the debtor has
22 not acknowledged the language. And since you're not
23 the holder of the note, correct, Mr. Crown?

24 MR. CROWN: I am not.

25 MR. WARNER: Okay. And, Mr. Morgan,

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1 you're not the holder of the note, is that correct?

2 MR. MORGAN: Correct..

3 MR. WARNER: So we don't have any
4 evidence that the holder of the note has acknowledged
5 that they also understand, notwithstanding the language
6 of the note, how the terms of the note will be handled.

7 MR. BUNCHER: Well, he testified that
8 he's had discussions, so there is that evidence.
9 You're saying that there hasn't been somebody from -- a
10 representative of the individual note holders
11 testifying to that effect --

12 MR. WARNER: Correct.

13 MR. BUNCHER: -- or file anything to
14 that effect. And I acknowledge that.

15 MR. WARNER: That's right.

16 MR. BUNCHER: That's true. You have
17 what Mr. Morgan has said, and he said that they've
18 agreed to that. So that is some evidence. I mean,
19 whether you want to call it hearsay or whatever, but he
20 says he's had discussions and that's been agreed to.

21 MR. WARNER: It sure seems to me that if
22 I were going to have a note and then have it modified,
23 I would have the modification in writing.

24 So, Mr. Morgan, is there anything in
25 writing modifying the terms of the note?

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1 MR. MORGAN: No, not yet.

2 MS. DURHAM: Okay. Dennis, did you have
3 more questions?

4 MR. OLSON: No.

5 MS. DURHAM: Did you have questions?
6 Anybody have questions? Yes?

7 MR. GORDON: We have one that's kind of
8 a --

9 MS. DURHAM: You have to get real close
10 because we're recording it, and then you've got to
11 state your name before asking it.

12 MR. GORDON: All right. I'm Jim Gordon,
13 and I'm representing --

14 MS. DURHAM: Closer. Sorry.

15 MR. GORDON: Where is the microphone?

16 MS. DURHAM: It's hidden.

17 MR. GORDON: I'm Jim Gordon, and I
18 represent Access 1st Bank, and obviously we had several
19 -- many notes that the properties are now part of the
20 debtor's estate. One note, though, that we cannot
21 confirm is TCI Alvin (phonetic) loan. Do you know, was
22 that transferred to FRE?

23 MR. CROWN: It was not.

24 MR. GORDON: It was not? Okay.

25 Is there any thought that it might be at

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1 some -- some point in the future?

2 MR. CROWN: Not for this -- (inaudible).

3 MR. GORDON: I guess then this next
4 question would just be a matter of curiosity.

5 Why was it not transferred along with
6 the other notes of the other borrowers of Access 1st
7 Bank?

8 MR. CROWN: I was not the architect of
9 that note.

10 MR. GORDON: I see.

11 Doug, do you know?

12 MR. BUNCHER: I do not.

13 MS. DURHAM: Well, earlier, Mr. Crown,
14 you said that properties that were doing well weren't
15 transferred. Is that right? Did I understand that
16 right? Cash flowing and --

17 MR. CROWN: Well, I said that TCI and
18 other public entities that were the beneficial owners
19 of the transferrors of these properties own many other
20 properties, income-producing and --

21 MS. DURHAM: Is that --

22 MR. CROWN: -- and many of those were
23 note transferred.

24 MR. GORDON: That is just to my
25 understanding raw land.

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1 MR. CROWN: Right.

2 MS. DURHAM: So it couldn't have been
3 cash flowing too much, huh?

4 MR. GORDON: Right. Right.

5 MR. CROWN: Right.

6 MR. GORDON: Not at all.

7 And I apologize for being late. We were
8 delayed by traffic.

9 MR. CROWN: Another criteria I have to
10 say is that, remember, some -- a lot of these were
11 cross-collateralized. So, to the extent that a given
12 loan was not cross-collateralized where one asset at
13 risk kind of brought the other one with it, that might
14 have been the case -- (inaudible).

15 MR. GORDON: All right. Do you know
16 whether the entities that have been referred to as the
17 insider -- the original owners of the property, the
18 debtors of the various banks, have they retained funds
19 or have they paid the ad valorem taxes that were due by
20 January 31st?

21 MR. CROWN: They did not retain funds,
22 and to the -- I can't vouch for the fact that no taxes
23 were paid, but the vast majority of the taxes were not
24 paid for 2010 for Texas properties.

25 MR. GORDON: And I looked at the

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schedules and it didn't appear that the original owning entities transferred anything other than land in connection with these transactions at the end of December. Is that -- is that correct?

MR. CROWN: Well, to the extent -- most of the land had very few accounts payable trade payables. To the extent they did, those were transferred -- the taxes payable were transferred. There was very, very -- there were only a couple of small bank accounts for the land parcels. So they transferred the -- the land asset and any associated payables or tax -- trade payables or tax payables with it. To the extent there was any cash, it was transferred, and there were a couple of accounts that were -- were there for land, but not many.

MR. GORDON: That's all I have.

MS. DURHAM: Okay.

MR. GORDON: And I'll yield this prime position --

MS. DURHAM: Laurie, do you have questions? You really do have to get kind of close to the mike. I'm sorry.

MS. HUFFMAN: I'm Laurie Huffman, and I represent Dallas County, Urbanized Kaufman County, and other taxing authorities in this case.

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1 Where are the two hangers that you
2 leased in Addison?

3 MR. CROWN: They're right near Addison
4 Airport.

5 MS. HUFFMAN: I need addresses for those
6 hangers.

7 MR. CROWN: Yeah. I believe that we got
8 a request from you for detailed information, and that
9 should be outgoing today or tomorrow. All of the DCAD
10 numbers and so on of every single one of the taxes
11 payable.

12 I realize the detail shown on the
13 Schedule E was not great.

14 MS. HUFFMAN: Okay. I don't need tax
15 amounts from you, but addresses --

16 MR. CROWN: Yeah. They'll have all of
17 that.

18 MS. HUFFMAN: -- and account numbers
19 will be very helpful because --

20 MR. CROWN: They will all have account
21 numbers.

22 MS. HUFFMAN: -- I don't think that the
23 amounts are actually going to reflect what will be in
24 our claim because there are 2011 taxes as well. Just
25 so you know. So don't worry about providing me with

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1 amounts, but some of these accounts, because of all the
2 transfers that were done in December prior to the
3 filing, the appraisal districts have not picked those
4 deeds up yet.

5 MR. CROWN: Right.

6 MS. HUFFMAN: So at this point I can't
7 tell anyone how much the tax that is, but it's over a
8 million.

9 MR. BUNCHER: For 2011?

10 MS. HUFFMAN: Well, no. There are some
11 -- the 2010 accounts that we have found that are in the
12 names of the debtor's alias, some of those have been
13 paid for 2010, some of them have been partially paid.
14 And that million dollars is not just 2011.

15 MR. BUNCHER: Okay.

16 MS. DURHAM: The alias you're talking
17 about is Fenton?

18 MS. HUFFMAN: No. I'm talking about TCI
19 Park West.

20 MR. BUNCHER: Okay.

21 MS. HUFFMAN: The only -- the only
22 properties that are showing up in that name in Dallas
23 County are eight properties in Farmers Branch. So the
24 Dallas Central Appraisal District still has all the
25 other properties located in Dallas County in other

1 Page 94

2 names.

3 MR. CROWN: Should that information go
4 to you?

5 MS. HUFFMAN: Which information?

6 MR. CROWN: That you're requesting,
7 addresses and so on and so forth.

8 MS. HUFFMAN: Yes.

9 MR. CROWN: Can you give me a card? And
I'll make sure it gets to you.

10 MS. HUFFMAN: I'll definitely do that
11 when this concludes.

12 MR. CROWN: All right.

13 MS. HUFFMAN: And Mr. Neligan is aware
14 of my request as well. He has all my contact
15 information.

16 MR. BUNCHER: Right. Somebody in our
17 office has already -- we've already requested it from
18 -- there was -- he's the guy that is handling that
19 request, so --

20 MS. HUFFMAN: Okay. Well, I didn't
21 include the two hangers in my request yesterday --
22 (inaudible).

23 MR. CROWN: Now, do you recognize that
24 those are not owned?

25 MS. HUFFMAN: Yes, I understand that.

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1 But you also have business personal property at those
2 locations, and I need to locate those business personal
3 property accounts.

4 MR. CROWN: All right.

5 MS. DURHAM: Okay. Then we're going to
6 do a few more. So Mark --

7 MR. STROMBERG: A couple of followup
8 questions.

9 MS. DURHAM: Will you state your name
10 one more time.

11 MR. STROMBERG: Yes. Mark Stromberg on
12 behalf of State Bank of Texas.

20 MR. CROWN: That's correct.

21 MR. STROMBERG: Did however, Prime
22 Income Asset Management also receive payment from any
23 of the transferror entities?

24 MR. CROWN: I believe not. I believe
25 that the fee arrangements related to asset management

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1 provided by Prime to those public entities was directly
2 with the public -- public entities, and that was the
3 source of the -- (inaudible).

4 MR. STROMBERG: So if Prime Income Asset
5 Management was providing services for the transferror
6 entities prior to December 23rd, 2010, those services
7 were being paid for by one of the public companies?

8 MR. CROWN: Yeah. Now, I can't -- there
9 may have been some intercompany payables, receivables,
10 allocations and so forth that filtered down to the
11 various subsidiaries. I -- I don't know exactly how it
12 was accounted for.

13 MR. STROMBERG: You anticipated my next
14 question, which is going to be, if the publicly-traded
15 companies were paying for the expenses that Prime
16 Income Asset Management was incurring on behalf of the
17 transferror entities prior to December 23rd, 2010,
18 would there have been a liability reflected in the
19 books of the transferror entities back to either of
20 those publicly-traded entities who were paying the
21 expenses on their behalf?

22 MR. CROWN: If that was -- if it was
23 accounted for that way, presumably so, but I don't know
24 how it was accounted for.

25 MR. STROMBERG: Okay. Who would know

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1 the answer to that?

2 MR. CROWN: Amy Cole.

3 MR. STROMBERG: Okay. You just were
4 asked some questions earlier by Mr. Gordon on behalf of
5 Access 1st Bank, and looking at a schedule that was
6 discussed in Mr. Morgan's deposition regarding the
7 Arcon property, they hold a lien on the Arcon property,
8 as does State Bank of Texas.

9 MR. CROWN: Uh-huh.

10 MR. STROMBERG: Do you know what that
11 loan was for?

12 MR. CROWN: I don't know what that loan
13 was for.

14 MR. STROMBERG: And you're referencing
15 the debtor interview document?

16 MR. CROWN: Yes. And this is the
17 attachment to Schedule B.

18 MR. STROMBERG: Okay.

19 MR. CROWN: There's a separate 5.3 acre
20 site that Arcon -- that Access 1st Capital has a --
21 it's not the same parcel as the State Bank of Texas.

22 MR. STROMBERG: Okay. So --

23 MR. CROWN: It's an entirely different
24 parcel, but we label it as Arcon because they are
25 adjacent.

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1 MR. STROMBERG: I see.

2 MR. CROWN: One is 5.3 acres; one is
3 18.8 acres. It's got -- that one has got the
4 tenant-in-common issue --

5 MR. STROMBERG: With parking garage?

6 MR. CROWN: -- with the parking garage
7 and so on.

8 MR. STROMBERG: Okay.

9 MR. CROWN: So two separate parcels both
10 called Arcon, but separate lenders.

11 MR. STROMBERG: Thank you. I appreciate
12 that.

13 I had asked you some questions earlier
14 about who was involved in the decision to file the
15 bankruptcy, and you indicated it was -- it may have
16 been others, but Mr. Moos and Mr. Shelley were the two
17 that you named.

18 MR. CROWN: Yes.

19 MR. STROMBERG: Were there any others
20 that you can think of?

21 MR. CROWN: I -- I don't know who else
22 was involved in the meetings. I was not part of any of
23 them.

24 MR. STROMBERG: Okay. And just to be
25 clear, there was a prior decision made to roll the

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1 properties up on December 23rd, 2010. Who was involved
2 in making that decision again?

3 MR. CROWN: Well, certainly those two
4 individuals would have been involved. I don't know
5 beyond that who else was part of the decision.

6 MR. STROMBERG: And you weren't involved
7 in that decision?

8 MR. CROWN: I was not, no.

9 MR. STROMBERG: Okay. In your schedules
10 and also in the document you were just looking at from
11 the debtor interview there are values listed for the
12 property.

13 MR. CROWN: Yes.

14 MR. STROMBERG: Can you amplify on how
15 it is that these values were ascertained?

16 MR. CROWN: I was given those values as
17 part of the file, so I was not a party to the
18 determination of what the values were.

19 MR. STROMBERG: Who gave you those
20 values?

21 MR. CROWN: I was given some -- some
22 information to summarize each of the -- each of the
23 sales with basically the same information that's
24 disclosed here. This is the value. This is the
25 underlying secured debt. This is the buyer/seller note

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1 payable. And I was not given the details as to how
2 they were derived at.

3 MR. STROMBERG: Okay. Who was it that
4 gave you those values again?

5 MR. CROWN: Well, I was given the -- the
6 information by -- let's see, I believe an individual by
7 the name of John Daugherty gave me a summary, and he is
8 in our legal department -- gave me a summary of the --
9 of the assignments.

10 MR. STROMBERG: How do you spell
11 Mr. Daugherty's name?

12 MR. CROWN: D-A-U-G-H-E-R-T-Y. I
13 believe the Irish way.

14 MR. STROMBERG: And you say he's in our
15 legal department. What do you mean when you say "our"?

16 MR. CROWN: He's in the Prime legal
17 department.

18 MR. STROMBERG: Prime Income Asset
19 Management?

20 MR. CROWN: Yes.

21 MR. STROMBERG: Okay. And is he an
22 attorney?

23 MR. CROWN: I don't believe he is.

24 MR. STROMBERG: Do you know where
25 Mr. Daugherty got these values?

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1 MR. CROWN: He got them based on
2 discussions with -- with the individuals that made the
3 decisions to -- to transfer the assets.

4 MR. STROMBERG: Again, as far as we
5 know, that's Mr. Moos and/or Mr. Shelley and perhaps
6 others?

7 MR. CROWN: Perhaps others, yes.

8 MR. STROMBERG: Did you get an
9 understanding from Mr. Daugherty what these values
10 represented or where they came from?

11 MR. CROWN: No. I know that there were
12 -- there were several -- several considerations. There
13 were concepts of book value, concepts of market value
14 based on recent or comparable appraisals for the
15 income-producing properties, considerations of income
16 -- the income approach to value as would be contained
17 in an appraisal using various and sundry cap rates
18 applied to net operating income, consideration of
19 stabilized values for those that were not fully leased
20 at the moment.

21 MR. STROMBERG: Let me just ask you with
22 respect to the Arcon property.

23 MR. CROWN: All right.

24 MR. STROMBERG: Will you take a look at
25 the document again. Can you tell me specifically with

1 Page 102

2 respect to that one what the considerations were if you
3 know?

4 MR. CROWN: Well, it's not an
5 income-producing property. So it's going to be based
6 on a combination of -- of book value, recent appraisals
7 or comparable appraisals, an idea of what the market
8 is.

9 The individuals at TCI and Prime and so
10 forth that are involved in the management and sale of
11 land are in the marketplace constantly, so they're well
12 aware of what land is fetching in various locales.

13 MR. STROMBERG: Can you tell me what the
14 alchemy is here as between these various considerations
15 that comes up with this number, what those various
16 values were or how it was they were weighted to come up
17 with a number that --

18 MR. CROWN: I can't because I wasn't in
19 the room at the time that those numbers were arrived
20 at.

21 I do know that those were some of the
22 considerations. I just don't know what measure of each
23 was applied, if there was a recent appraisal that
24 someone had of the particular property or perhaps an
25 adjacent or very comparable property that they could
 put side by side and say, yes, that applies to this

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1 property, it's dated eleven months ago or five months
2 ago or last Tuesday or what have you. I don't know
3 exactly what they were considering, but I know that a
4 combination of those approaches was used.

5 MR. STROMBERG: Do you know whether in
6 respect to this particular property there was an
7 appraisal within the last several years?

8 MR. CROWN: (Inaudible.)

9 MR. STROMBERG: Okay. Have you -- have
10 you checked the file related to the Arcon property that
11 you indicated Ms. Cole probably has in her possession
12 to see if such documentation exists?

13 MR. CROWN: Well, she wouldn't have
14 that. What she would have would be just the accounting
15 information. She'd have, you know, expenditures for --
16 for interest and taxes and so on and so forth. She's
17 an accountant, and that's what she handles.

18 MR. STROMBERG: So who --

19 MR. CROWN: Steven Shelley would have
20 access to any appraisals that were prepared --
21 (inaudible).

22 MR. STROMBERG: Okay. Now, what
23 diligence did you do in determining the accuracy of the
24 alchemy that went into determining these numbers based
25 on all of these considerations?

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1 MR. CROWN: I did not do any particular
2 due diligence. I've -- these -- I've been in the real
3 estate business for 38 years, and when I looked at
4 these assets, you know, whether it be raw land and cost
5 per square foot or value per square foot or
6 income-producing assets, looking at their grosses and
7 nets and values per square foot, it did not seem at all
8 aggressive to me.

9 MR. STROMBERG: So kind of a squint and
10 look at it, seems right kind of approach?

11 MR. CROWN: I think it's a little bit --
12 it's based on a long time looking at a lot of numbers
13 in my case.

14 But, as I looked at them, I said, you
15 know, is it -- is it out of the question that this
16 particular asset could be valued at, you know, 75
17 dollars a foot, or, in the case of land -- in some
18 cases some of these lands are valued at 20 cents a
19 square foot.

20 MR. STROMBERG: Well, I'm just trying
21 to --

22 MR. CROWN: It's hard to imagine that
23 these -- that these property values are aggressive.

24 MR. STROMBERG: I'm just trying to get
25 an understanding of what sort of background work you

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1 did to follow up, if anything, to make a determination
2 beyond your general knowledge --

3 MR. CROWN: Other than applying my
4 experience and eyeballing these from a reasonableness
5 standpoint, I did not do a due diligence on the value,
6 no.

7 MR. STROMBERG: All right. My last
8 question --

9 MR. CROWN: These were the value that
10 two -- two entities agree on when they sold and bought
11 an asset, and I believe that that probably dictates at
12 least the market value of that asset.

13 MR. STROMBERG: And those entities being
14 the transferror entity and Fenton Real Estate?

15 MR. CROWN: Yes.

16 MR. STROMBERG: All right. Were you
17 involved in the decision as to who would be the chief
18 restructuring officer for Fenton Real Estate or FRE
19 Real Estate?

20 MR. CROWN: No. No, I wasn't.

21 MR. STROMBERG: Do you know who was?

22 MR. CROWN: No, I -- I do not know. I
23 was not involved in the process at all.

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2

working with him and I didn't know what his involvement
was until he announced himself.

3 MR. STROMBERG: You were in court when
4 Mr. Morgan had an opportunity to testify at the last
5 hearing, am I right?

6 MR. CROWN: I was.

7 MR. STROMBERG: Okay. And you were
8 there when he indicated to the court that, for his due
9 diligence in preparing the schedules and the values and
10 what have you, he was relying on you. Am I right?

11 MR. CROWN: Yes.

12 MR. STROMBERG: Okay.

13 MR. CROWN: Largely so.

14 MR. STROMBERG: Pass the witness.

15 MS. DURHAM: I have a question.

16 Why would FRE right now need to lease
17 air -- airplane hangers?

18 MR. CROWN: FRE doesn't -- (inaudible).

19 MS. DURHAM: Okay. No. So FRE, there
20 was transfer because it was property owned by --

21 MR. BUNCHER: One of the -- one of the
22 airplane hangers actually has positive cash flow.

23 MR. CROWN: Yeah.

24 MS. DURHAM: Because it -- because you
25 rent out the space?

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1 MR. BUNCHER: They sublease it.

2 MR. CROWN: Yeah, to the people who own
3 the planes and they -- they pay you rent.

4 And the other one was occupied until the
5 11th, so, I mean --

6 MS. DURHAM: By a rent payer?

7 MR. CROWN: By a rent payer. Yes.

8 MS. DURHAM: Okay. An unrelated rent
9 payer?

10 MR. CROWN: Unrelated rent payer.

11 MR. BUNCHER: We're not sure what we're
12 doing with those leases, by the way.

13 MR. CROWN: So what they've acquired is
14 the leasehold interest in those, which, up until
15 November, both of them were --

16 MS. DURHAM: Okay.

17 MR. CROWN: -- flowing operating
18 profits.

19 MS. DURHAM: Okay.

20 MR. WARNER: I'm going to follow up
21 on --

22 MS. DURHAM: We're going to hold you to
23 ten minutes this time. Go ahead. Take two.

24 MR. WARNER: Oh, I'm sorry. Michael
25 Warner --

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1 UNIDENTIFIED SPEAKER: Does he only get
2 nine this time?

3 UNIDENTIFIED SPEAKER: This is Round 3,
4 isn't it?

5 UNIDENTIFIED SPEAKER: No. This is a
6 followup.

7 MR. WARNER: Michael Warner on behalf of
8 HCMLP.

9 Let me follow up on your discussions on
10 the numbers that were placed in the schedules in the
11 valuation.

12 You said you'd never seen an appraisal
13 done by a third party on these properties or you didn't
14 use those two to determine the numbers, correct?

15 MR. CROWN: I didn't use anything to
16 determine the numbers because I didn't determine them.

17 MR. WARNER: Right. You were just told
18 what numbers to put in?

19 MR. CROWN: Yes. And I looked at them
20 and felt that they, based on the assets as I knew them,
21 were reasonable.

22 MR. WARNER: Right. But -- and again,
23 that's your years --

24 MR. CROWN: I did not do any due
25 diligence on them.

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1 MR. WARNER: -- your years of
2 experience, your knowledge of the market, your
3 expertise, and then you concluded by saying sort of a
4 willing buyer and a willing seller came up to a number
5 and these made sense?

6 MR. CROWN: Yes, to those individuals --

7 MR. WARNER: But you never looked at an
8 appraisal performed by a third party in order to value
9 these properties and put them down. You took what
10 someone else told you to put down?

11 MR. CROWN: Right.

12 MR. WARNER: Okay. Did you challenge
13 any of the numbers that -- that whoever it was that
14 ultimately gave them to you, did you say that's too
15 high or that's too low?

16 MR. CROWN: No, I did not challenge
17 them. I felt that they were conservative, quite
18 frankly. In many cases I felt they were conservative,
19 but I did not -- did not challenge them, no.

20 MR. WARNER: So you took them as they
21 were given, but you did do your own gut check?

22 MR. CROWN: Yes.

23 MR. WARNER: Okay. Mr. Morgan, did you
24 look at any appraisals of the properties before you
25 signed the schedules to determine that these are good

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1 numbers? Did you ask anybody for appraisals?

2 MR. MORGAN: No.

3 MR. WARNER: Did you do the same gut
4 check?

5 MR. MORGAN: More than a gut check. I
6 actually went around and interviewed the land people,
7 for example, to get an idea about what land was doing,
8 -- problems were with them, where they were positioned
9 in that particular asset, and a ballpark range for what
10 today's market would be if it was (inaudible).

11 And then I took a sample of those and
12 compared it to the debt that was being assumed, and
13 concluded that there was about a 200 percent debt
14 service coverage based on today's market, not the ones
15 that I sampled. I did not sample them all.

16 In respect to your particular asset, I
17 looked at two things. I looked at the replacement
18 cost, which is a (inaudible). I looked -- I didn't
19 have the comparables to work with, but I could see that
20 with a minimus amount of leasing -- not a minimus
21 amount of leasing, but leasing to get it up to the
22 market rate that the market was going for, the property
23 would be worth far in excess of the debt.

24 MR. WARNER: You said you spoke to land
25 people. Land people at TCI?

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2 MR. MORGAN: No. It's land (inaudible).

3 The guy's name is Henry Butler and R. L. Lemke. They
4 are the ones that have been involved representing Prime
in the land management and sales of all the land.

5 MR. WARNER: Those gentlemen work for
6 Prime or TCI or one or the other?

7 MR. MORGAN: Prime.

8 MR. WARNER: Prime. So, again, no
9 outside third party. Everybody is in the umbrella of
10 American Realty Trust, TCI, Prime, that you've spoken
11 to and you've talked to, correct?

12 MR. MORGAN: That was -- that was
13 preliminary -- my preliminary decision.

14 MR. WARNER: Okay. Let me ask you a
15 question on a different subject.

16 You testified a week ago on the 3rd of
17 February at the hearing that you had no commitments for
18 funding of this debtor for administrative costs or plan
19 or anything. Is that correct?

20 MR. MORGAN: That's correct.

21 MR. WARNER: Has that changed today?

22 MR. MORGAN: Not today, but it could
23 change by tomorrow.

24 MR. WARNER: What's happening tomorrow?

25 MR. MORGAN: I have -- I have a meeting

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2

-- I have a meeting this afternoon at Transcontinental.

2 MR. WARNER: I'm sorry. With who?

3 MR. MORGAN: I have a meeting with
4 Transcontinental to talk through the various issues and
5 concerns that I have relative to how we're going to run
6 this stuff to see if they're willing to step to the
7 table.

8 MR. WARNER: And who is that meeting
9 with?

10 MR. MORGAN: Mr. Moos.

11 MR. WARNER: Mr. Moos? Anybody else?

12 MR. MORGAN: (No audible response.)

13 MR. WARNER: Okay. Has there been any
14 preliminary discussions or exchanges of documents?

15 MR. MORGAN: In what sense?

16 MR. WARNER: Well, funding usually comes
17 with documents, long documents, agreements, terms, term
18 sheets. Or is this just you and he are getting
19 together to talk?

20 MR. MORGAN: No. Yeah. You don't do
21 the term sheets until you have an agreement, and I
22 don't have an agreement yet.

23 MR. WARNER: Okay. Have you asked for
24 funding?

25 MR. MORGAN: Not yet. I have advised

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1 him that that was -- that was -- (inaudible).

2 MR. WARNER: So at this moment you have
3 no source of funding?

4 MR. MORGAN: I do not.

5 MR. WARNER: Okay. Let me go into one
6 other topic, and that's the efforts that you're
7 undertaking to lease the Fenton property. Are you
8 doing those efforts?

9 MR. MORGAN: No.

10 MR. WARNER: Who is doing them?

11 MR. MORGAN: The leasing is coordinated
12 by Regis through a gentleman named Scott Porter. And
13 Scott Porter is a liaison with all of the third-party
14 brokers, in this case, Grubb & Ellis as the next
15 (inaudible).

16 MR. WARNER: Grubb & Ellis is an outside
17 brokerage firm retained by whom?

18 MR. MORGAN: By Regis.

19 MR. WARNER: To represent whom? Regis?

20 MR. MORGAN: No, to represent the
21 property in doing the leasing in behalf of --
22 (inaudible).

23 MR. WARNER: And I assume, unless I'm
24 missing something, you haven't filed an application to
25 employ them with the court yet, have you?

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1 MR. MORGAN: Employ whom?

2 MR. WARNER: Grubb & Ellis.

3 MR. MORGAN: No. They were already in
4 place.

5 MR. WARNER: But there's been no
6 application since you've filed bankruptcy?

7 MR. MORGAN: That's correct. They're
8 commission only.

9 MR. WARNER: That's fine.

10 MR. BUNCHER: If we sell the property or
11 we have the lease -- I mean, do you really need to
12 question him and take up time about whether we need to
13 file an application?

14 MR. WARNER: Well, I'm just trying --

15 MR. BUNCHER: If we need to file an
16 application, we'll file an application.

17 MR. WARNER: So tell me what's the
18 status of your discussions with this tenant that you
19 told the court is hoping to come to the table.

20 MR. MORGAN: Coming from the brokerage
21 or the broker and to me, we are in competition with one
22 other tenant, one other building, which is I believe
23 the Duke Realty Building at Belt Line and 635.

24 The difference is that they're -- it has
25 covered parking. It also has food service, interior

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1 food service, which is available to the tenants. It
2 also is in the process of doing an exercise facility,
3 which was very attractive to the tenant initially, and
4 so it has the ability to provide -- it's not a major
5 issue, but it has it -- one of their requirements in
6 their last request for proposal was they wanted the
7 ability to have their own electrical generator, and it
8 just so happens that there's one in the building.

9 MR. WARNER: How long a lease is it that
10 they're proposing?

11 MR. MORGAN: Ten years.

12 MR. WARNER: And when would it start?

13 MR. MORGAN: Right now the rent would
14 start about December.

15 MR. WARNER: The rent would start
16 December 1. When would the tenant take possession?

17 MR. MORGAN: I don't -- I don't recall
18 the particulars, but we thought we had filed and
19 provided to -- to all the parties the -- to -- to I
20 assume your counsel -- we provided the actual lease
21 proposal.

22 MR. WARNER: Okay. And is there tenant
23 improvement requirements to be done by the building?

24 MR. MORGAN: Yes. Thirty-five dollars a
25 square foot.

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1 MR. WARNER: I'm sorry. How much?

2 MR. MORGAN: Thirty-five dollars a
3 square foot.

4 MR. WARNER: And how many square feet
5 are they looking for?

6 MR. MORGAN: Short changes, three and a
7 half million dollars.

8 MR. WARNER: A hundred thousand square
9 feet would be the answer, is that correct?

10 MR. MORGAN: That's correct.

11 MR. WARNER: So three and a half million
12 dollars in tenant improvements?

13 MR. MORGAN: Yes.

14 MR. WARNER: And the tenant would pay
15 that?

16 MR. MORGAN: No.

17 MR. WARNER: Who would pay that?

18 MR. MORGAN: The landlord is going to
19 have to pay that.

20 MR. WARNER: And where do you envision
21 that coming from?

22 MR. MORGAN: Once they are signed, the
23 property is worth more -- worth a lot more than the
24 first mortgage. So we'd either refinance it or we'd
25 have to borrow the money from a second mortgage in

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1 order to pay for it.

2 MR. WARNER: And who have you talked to
3 about refinancing that property?

4 MR. MORGAN: Again, I don't get the cart
5 before the horse. You have to have the income first
6 before -- (inaudible).

7 MR. WARNER: Okay. So you've talked to
8 nobody about refinancing the property.

9 Have you talked to a second source, as
10 you used?

11 MR. MORGAN: No.

12 MR. WARNER: No? Your answer is no?

13 MR. MORGAN: No.

14 MR. WARNER: Okay. So would you sign
15 the lease without having the second source for the
16 funding of that three point five million?

17 MR. MORGAN: I won't sign the lease
18 until I submit it to the court with a source of funds.

19 MR. WARNER: And so you wouldn't sign
20 the lease with this proposed tenant without having the
21 source to do the tenant improvement, correct?

22 MR. MORGAN: My testimony is, and I want
23 to be sure that I'm clear, I can't sign a lease without
24 court approval. I would be remiss to go to the court
25 without having a funding source to cover the -- to

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2 cover the tenant.

3 MS. DURHAM: Okay.

4 MR. WARNER: How long? Was that nine?

5 MS. DURHAM: You were under. You were
actually at eight and a half.

6 Mark? Does anybody else --

7 MR. STROMBERG: No.

8 MS. DURHAM: -- have any other
9 questions?

10 Mr. Weitman, did you want to ask any
11 more questions?

12 MR. WEITMAN: No. I'm done.

13 MS. DURHAM: Okay. Mr. Gordon?

14 MR. GORDON: No. Thanks.

15 MS. DURHAM: Okay. I don't have any
16 more questions.

17 We'll be looking forward to the what
18 would be a lengthy operating report I'm going to guess
19 on the 20th.

20 Did you have any questions?

21 UNIDENTIFIED SPEAKER: I do not.

22 MS. DURHAM: Okay. This meeting is
23 concluded then. Thank you.

24 (End of proceedings.)

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1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, Frances M. Blacha, Certified Shorthand Reporter
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